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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 16, 1994
1:38 P.M.

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CALIFORNIA

FEBRUARY 16, 1994

P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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8 HEARING

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12 STATE CAPITOL

13 ROOM 113

14 SACRAMENTO, CALIFORNIA

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18 WEDNESDAY, FEBRUARY 16, 1994

19 1:38 P.M.

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25 Reported by:

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MICHAEL J. MICCICHE, Director
Department of Economic Opportunity

JOHN LEMMONS
John Lemons Consultants

RUBEN TREVISO
Veterans in Community Services

BILL GARCIA, State Advisor
American G. I. Forum of California

ZIGMUND VAYS, Chairman
Legislative Committee
Association of Southern California Energy Providers

DAVID C. GONZALEZ
Association of Southern California Energy Providers

JOHN D. SMITH, Director
Office of Administrative Law

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We have two gubernatorial appointees here today. First, Mr. Micciche.

Start by telling me how to say it properly.

MR. MICCICHE: Mi-chi-kay.

CHAIRMAN LOCKYER: What is that?

MR. MICCICHE: It's an Italian name.

CHAIRMAN LOCKYER: David Roberti would have known that. You already know the difference between the old and the new.

Thank you for joining us. I guess you might just begin by telling us who you are, what you've been doing, and why you should do this job.

MR. MICCICHE: Thank you, I'd be happy to. Thank you, Senator and Senators.

Again, my name is Michael Micciche. I was appointed as Director of the Department of Economic Opportunity in September of 1993.

Prior to that, I was acting Director for about a year, and then Chief Deputy prior to that.

I've spent a couple years over at the Housing and Community Development Department, and all in all, without going into each detail, I think it's self-evident on the resume that I've spent about 25 to 30 years in and around community action, community-based organizations, both directly and indirectly, and spent some time in and out of state government, federal government, and the private sector, but all directly or

1 indirectly related to working with low income individuals and
2 families and programs.

3 The Department right now has two or three areas that
4 we are really focusing on wholeheartedly and have spent a
5 significant amount of resources and time addressing. They
6 include: self sufficiency; lead paint abatement; and our
7 overall community services block grant and weatherization
8 programs.

9 We are 100 percent federally funded. We do not
10 impose on the General Fund, have not for some time. We are
11 looking at some impacts down the road, however, in the
12 President's proposed budget, at least, in Washington,
13 specifically related to our low income home energy assistance
14 program, which would result in about a \$33 million to the State
15 of California.

16 There's also some discussion in and around the budget
17 proposal which simultaneously has reauthorization this year, so
18 there's some discussion about changing the structure of that
19 program.

20 Basically, we have about 120 employees or 150,
21 depending on seasonal hires. We do a direct payment program
22 with HEAP. We do verification for PG&E and for some other small
23 utility companies, which, as you may know, is the
24 pre-eligibility determination for the 15 percent rate discount
25 in PG&E bills. We expect to be contracting with SMUD very
26 shortly, doing the same thing for their version of the program.

27 That is some of the source of nongovernmental funds
28 that we try to earn, and we're focusing our energies, really, on

1 looking at diversifying in that area as much as possible.

2 The Department, just as a little background for those
3 of you who don't know, is really the inheritor of the original
4 War on Poverty creation back in the '60s. It was then the
5 Office of Economic Opportunity. It's been located in many
6 different places in the state: in and out of the Governor's
7 Office; in EDD a couple times; and as an independent department.

8 We are now, by Executive Order, located in Health and
9 Welfare and are trying that for a year. We have found it, and I
10 think our network has found, that it's been very, very
11 productive, and very encouraging, and that we've been able to
12 mobilize resources and communicate better with each other,
13 agencies and departments with similar programs. Some of the
14 evidence of that is lead paint, which is a three-department
15 consortia, really, of three-department responsibility. And
16 other evidence includes our disaster participation, disaster
17 response, with Social Services and the agency as a whole. And
18 we'll be embarking on some experimental programs, hopefully,
19 with the Department of Social Services in the area of family
20 preservation and family resource development.

21 CHAIRMAN LOCKYER: Senator Ayala.

22 SENATOR AYALA: DEO received roughly \$3.7 million
23 from the Petroleum Violation Account in '92-93, and down to a
24 half a million last year. I'm told that there'll probably be no
25 funds from that Petroleum Violation Account for your Department
26 in '94-95.

27 What do you anticipate to be the affect of reductions
28 from the PVA funds, reduction to your Department?

1 MR. MICCICHE: What does it mean specifically --

2 SENATOR AYALA: What's going to be affected the most
3 that you feel --

4 MR. MICCICHE: The major effect is, we have
5 historically, at least over the last couple of years, used the
6 PVA funds to supplement the weatherization activities.

7 SENATOR AYALA: What percentage of the total budget
8 is that?

9 MR. MICCICHE: Oh, it's one percent, maybe, four or
10 five percent. That's all.

11 We have used it to augment weatherization because the
12 federal weatherization programs have regulatory and legislative
13 limitations on what they can do. So, we've used PVA funds to do
14 minor rehabilitation and some minor home repairs above and
15 beyond the weatherization. It's been pretty effective.

16 We do understand, by the way, that there is another
17 settlement pending with City Services Company, a \$100 million
18 settlement, which means the state may be in line for some
19 additional funds when that is settled.

20 SENATOR AYALA: You use it as supplemental funds --

21 MR. MICCICHE: Yes.

22 SENATOR AYALA: -- so it would not really be a
23 disaster to your budget this coming fiscal --

24 MR. MICCICHE: No, not a disaster.

25 SENATOR AYALA: You'd want to have them, but you're
26 not going to see that it's going to --

27 MR. MICCICHE: Right.

28 SENATOR AYALA: Thank you.

1 CHAIRMAN LOCKYER: A similar question is, if the
2 federal budget is enacted that provides about a 50 percent cut
3 in the Energy Assistance Program, what would you contemplate
4 doing about that?

5 MR. MICCICHE: That's a different story. That is a
6 major impact.

7 Unfortunately, it's hard to determine what effect
8 it's going to have on the Program because, as I indicated,
9 there's also a proposal or will be a proposal shortly from the
10 Administration to restructure the program. Right now, it has
11 basically three components with maximum percentages on each:
12 one is the Direct Payment Program, which is really an
13 entitlement payment, annual payment, to eligible residents; two
14 is an Emergency Crisis Intervention program; and three is
15 Weatherization.

16 We in California --

17 CHAIRMAN LOCKYER: What is the Crisis Intervention
18 Program?

19 MR. MICCICHE: That's people who are in danger of a
20 shut-off, can't pay their bill. Our agency steps in and make
21 sure that doesn't occur.

22 We also use a substantial amount, in fact this year,
23 we'll be using 25 percent of our total for weatherization, which
24 of course as you know, with all the studies, really is the best
25 approach to energy conservation and keeping money in people's
26 pockets for consumer income.

27 So, unless we know -- until we know what the
28 President's going to do with that structure, what we've read and

1 heard is that he wants to lean more towards the
2 weatherization/self-sufficiency aspect and really decrease or
3 eliminate the Direct Payment Program.

4 There's tremendous opposition to that, particularly
5 in the colder climates of the North East and the North Central,
6 which really do 100 percent in that area. They spend almost all
7 of their money in that Direct Payment Program.

8 But regardless of that --

9 CHAIRMAN LOCKYER: You mean in the northern part of
10 the country?

11 MR. MICCICHE: Yes, not California.

12 Our problem in California is that everybody thinks
13 it's Los Angeles, and they forget that Truckee is also here, you
14 know. So, we fight that battle on a separate front.

15 Obviously, \$33 million, which is what we estimate it
16 would be, if it stands at 51 percent cut, would have a major
17 impact on staffing and on our network's ability to provide the
18 extent of services they currently provide.

19 CHAIRMAN LOCKYER: And how would you prioritize among
20 the expenditures? I guess that's another way of asking what is
21 the contemplated restructuring?

22 MR. MICCICHE: Well, the President's contemplated
23 restructuring is leaning towards weatherization, and self-
24 sufficiency, and long-term prevention. But there's no more
25 specifics than that.

26 CHAIRMAN LOCKYER: So that would mean the direct
27 payment or the emergency fund would be the lower priority?

28 MR. MICCICHE: Yes, that's what we hear.

1 CHAIRMAN LOCKYER: I see PG&E and SMUD bills, as
2 someone who lives in two places, and they routinely tell me how
3 low interest loans are available, or some other help, to do
4 weatherization.

5 That's just conducted by themselves; that's not your
6 program or monies?

7 MR. MICCICHE: It's not through the state Department,
8 but most of the agencies that administer the utility programs
9 are the same agencies that administer ours.

10 CHAIRMAN LOCKYER: So they're subcontracting with
11 people?

12 MR. MICCICHE: Most of the community action agencies,
13 et cetera.

14 CHAIRMAN LOCKYER: Their CAP is to do PG&E or --

15 MR. MICCICHE: Right, or Southern Cal. Gas, Southern
16 Cal. Edison.

17 CHAIRMAN LOCKYER: To do that program and
18 additionally be contracting with you?

19 MR. MICCICHE: Correct.

20 CHAIRMAN LOCKYER: Why do we have two things? Is
21 there a different eligibility criteria or something else?

22 MR. MICCICHE: No, it's really a low-income -- their
23 program is a low-income weatherization program as well. Theirs
24 emanated, of course, with -- through the PUC some years ago, and
25 it's taken on various and different types.

26 We understand, as a matter of fact, that they're
27 considering cutting back tremendously in that program as well.

28 CHAIRMAN LOCKYER: Is that "they" meaning the PUC?

1 MR. MICCICHE: No, the utility companies. They're
2 looking at it, would like to, I think, phase down a little bit
3 in that program.

4 CHAIRMAN LOCKYER: Is that a PUC order?

5 MR. MICCICHE: No.

6 CHAIRMAN LOCKYER: They're volunteering?

7 MR. MICCICHE: They'd like to propose to do so.

8 And not all utilities do it, you know. It's really
9 the major -- the big ones. And of course, they do the 15
10 percent reduction; most of them do something of that nature as
11 well.

12 CHAIRMAN LOCKYER: You mean a lifeline rate or
13 something?

14 MR. MICCICHE: Yes, a rate reduction. And we certify
15 that client for PG&E. We do a preverification eligibility for
16 them.

17 But the programs really do complement one another.
18 One of the benefits that the state has realized because of their
19 involvement, the federal government provides leveraging funds
20 for all these nongovernmental funds you're able to leverage in
21 this program, and we have always been in the top three or four
22 nationally in that regard. In fact, last year we leveraged more
23 than the federal grant, which was 60 million; we leveraged over
24 60 million based on the utility companies' involvement. So,
25 that would be missed if they phased back in conjunction with the
26 federal cutback.

27 CHAIRMAN LOCKYER: Is there a way to try to integrate
28 the two efforts and rely more on the private rather than the

1 public?

2 MR. MICCICHE: Our network of contracting agencies
3 and CAAs are doing just that and have continued to try to do
4 that. In fact, I'm meeting with utilities currently to try to
5 talk them out of any cutbacks, really.

6 Of course, utilities are also in Washington, making a
7 pitch for the federal program to continue as well.

8 CHAIRMAN LOCKYER: Other questions? Yes, Senator
9 Ayala.

10 SENATOR AYALA: A couple more.

11 For what purposes has your agency provided community
12 services block grants in this current fiscal year?

13 MR. MICCICHE: Community services block grant, by the
14 nature of the definition, is locally determined.

15 SENATOR AYALA: Locally determined by whom?

16 MR. MICCICHE: By the community. Every county in the
17 State of California --

18 SENATOR AYALA: In what way? They have supervisors,
19 or local agencies?

20 MR. MICCICHE: It starts, really, at the grass roots.
21 If the county has a nonprofit community action agency, for
22 example, they would hold one or more public hearings, community
23 meetings, usually in various neighborhoods, and it works its way
24 up to be approved and submitted to the Department, which in turn
25 incorporates it into the state plan, which goes to Washington.

26 SENATOR AYALA: How do you determine where federal
27 block grants, funds, will do the most good? What criteria do
28 you use for that?

1 MR. MICCICHE: It's on an allocation formula by
2 county, and it's based solely on the low income census
3 statistics.

4 SENATOR AYALA: From within local --

5 MR. MICCICHE: Right, and it's revised every ten
6 years as the census is published.

7 SENATOR AYALA: Thank you.

8 CHAIRMAN LOCKYER: Are those funds, as the title
9 suggests, generally available for county uses? Do they have
10 considerable discretion?

11 MR. MICCICHE: Yes, they do have considerable
12 discretion.

13 CHAIRMAN LOCKYER: Within those, what, general
14 federal --

15 MR. MICCICHE: General parameters that you must serve
16 the eligible population, which is really an income determinant.
17 But beyond that, we have a -- I mean, agencies vary from Eureka
18 to San Diego in terms of how they use the funds: homeless
19 programs; transitional housing programs; food and nutrition
20 programs; economic development programs for small minority
21 businesses.

22 It's really, I think, it's the truest nature of what
23 the block grant was intended to be. We don't tell them what to
24 do. They tell us what they want to do with it. As long as it
25 meets the general criteria, that's what they do.

26 CHAIRMAN LOCKYER: Are there programs that come to
27 mind that are exemplary that you wish everyone else would find
28 out about, that are really outstanding?

1 MR. MICCICHE: Oh, yes, a number of them.

2 Riverside County's Community Action Agency, which is
3 part of county government -- by the way, I should explain. We
4 have in California about a 50-50 split between public community
5 action agencies and private nonprofits.

6 Riverside has an exemplary program in the area of
7 family self-sufficiency and family development. And you've
8 often heard that it's often looked at as one of the successful
9 GAIN programs. But they have managed to integrate very, very
10 well their service delivery system there. They work on a self-
11 sufficiency long-term prevention mode. It's a case worker
12 approach; they deal with the entire family, and they have very
13 specific milestones, and they watch people, and they track them.
14 They have a tremendous success rate already.

15 They're all different in different ways with
16 variations. For example, Humboldt County, the Humboldt CAA in
17 Eureka is a very environmental and conservation oriented agency,
18 and much of it has had to be because of the lumber issues and
19 the fishing issues up there. And so, they have a lot of job
20 creation activities around conservation, and stream protection,
21 and that kind of thing, as well as -- and most agencies do have
22 some standard things that they all do.

23 They all do intake and referral, and they all do
24 housing, and energy, and weatherization, and that kind of thing.
25 But the differences vary a lot of times because of what the
26 localities would like to see occur.

27 The Bay Area has some excellent programs, the South
28 Bay Area, San Mateo County has weatherization and rehab.

1 programs.

2 CHAIRMAN LOCKYER: Are there particular private CAA
3 programs that come to mind as extraordinary?

4 MR. MICCICHE: Yes, and I might mention, I left out
5 the fact that besides CAAs, we fund migrant seasonal farmworker
6 agencies, and Native American groups, and limited purpose
7 agencies, and some energy providers that do just energy.

8 The migrant seasonal farmworker agencies do a
9 terrific job. I mean, they're providing some very unique
10 services to a unique population with unique needs. Most
11 recently, thanks to your generosity a couple years ago with some
12 PVA funds, we did a very unique program with the state's migrant
13 housing stock that has really kind of owned, operated, by HCD
14 and managed locally by housing authorities. Our weatherization
15 agencies -- the migrant seasonal farmworker weatherization
16 agencies have gone in there and are still in there, as a matter
17 of fact, re-roofing, and new windows, and in some cases heating
18 changes, water heaters, and that kind of thing. Very unique,
19 very much needed.

20 The Humboldt agency, by the way, is a private
21 nonprofit.

22 CHAIRMAN LOCKYER: What's the hardest part of your
23 job?

24 MR. MICCICHE: Hardest part of my job? Being here.

25 [Laughter.]

26 MR. MICCICHE: I don't know that I have -- I mean, I
27 just really enjoy my job. I just don't see that hard --

28 CHAIRMAN LOCKYER: Nothing that stands out?

1 MR. MICCICHE: I enjoy -- I've been doing it for so
2 long that I just enjoy doing it.

3 CHAIRMAN LOCKYER: Other questions from Members?

4 I believe there might be some public comment. If
5 there's anyone that wishes to -- yes, sir.

6 MR. LEMMONS: I'm John Lemmons, and I would like to
7 oppose the confirmation.

8 First I'd like to explain about myself. I spent 30
9 years in state service, primarily as a management auditor.

10 Since my retirement, I've worked representing
11 different members for different organizations, and I have worked
12 for CAFE de California for approximately the last four years.

13 Now, I'm not here today representing that
14 organization. I'm here representing myself and speaking for
15 Paul Bocanegra, who's in the audience, who's going to have to
16 leave in a few minutes because he's working on the Caltrans
17 disaster budget provisions.

18 CHAIRMAN LOCKYER: It's a disaster; you're right.

19 MR. LEMMONS: Yes, and I hear that they're getting
20 budget changes every hour.

21 I would first like to state that although our
22 concerns about Michael Micciche's qualifications relate to
23 personnel administration, I will not present an employee
24 grievance to this Committee. But I believe you should hear us
25 on personnel administration matters because it is one of the
26 largest costs of state government and involves constitutional
27 guaranteed property interests that have been ignored.

28 Just this last year, we've all seen articles in the

1 newspapers about many court awards of hundreds of thousands of
2 dollars to employees because of abuses in personnel
3 administration. These are awards that should not have occurred,
4 and I hope we will never become so callous as to consider them
5 the normal cost of government.

6 But even more important is the untold suffering of
7 state employees at the hands of bad managers and supervisors,
8 which is unconscionable, and I'm the one who has to deal with
9 their suffering.

10 We want the record to show that I, John Lemmons, and
11 Paul Bocanegra oppose the confirmation of Michael Micciche as
12 Director of the Department of Economic Opportunity for the
13 following reasons. There's only three of them. I'll try to
14 make it short.

15 Mr. Micciche is not accessible to those who need
16 recourse in dealing with Department managers. He could have
17 avoided our presentation here today if he would have been
18 willing to meet with us and discuss what we consider serious
19 problems in the Department. He has chosen to remain insulated
20 against uncomfortable problems.

21 By not being accessible, Mr. Micciche has abdicated
22 most of his power -- excuse me, my throat is sore -- much of his
23 power to his career executive who is more powerful than he in
24 many of our eyes.

25 He also insists that all matters be cleared through a
26 special assistant, which is merely a part of the filter system
27 designed to protect him from uncomfortable problems. But it
28 also serves to keep him uninformed, because in a bureaucracy,

1 bad news does not travel upward.

2 Number two, Mr. Micciche has not demonstrated a
3 willingness to control his managers, who, to many employees, are
4 vindictive and mean-spirited people who regularly abuse
5 employees in what these employees call psychological battery,
6 particularly the disabled, by making repeated references to
7 their disabilities, repeated inquiries about their medical
8 matters -- about medical matters pertaining to their
9 disabilities, and repeated suggestions that they participate in
10 employee assistance programs.

11 One disabled employee was refused a reasonable
12 accommodation, while another was threatened with punitive action
13 that was designed -- I mean disguised as a reasonable
14 accommodation. All of these examples are violations of the
15 Americans with Disabilities Act, a federal statute.

16 Number three, Mr. Micciche has shown little regard
17 for state and federal constitutional due process guarantees when
18 dealing with employees' property interests. Also, he lacks the
19 personal courage to make difficult personnel decisions.

20 As an employee -- as an example, he personally caused
21 the dismissal of a disabled employee without a meaningful due
22 process hearing. This was done even though the Skelley hearing
23 officer recommended against dismissal because the charges were,
24 quote, "unsupported and frankly petty," unquote.

25 The hearing was meaningful because Mr. Micciche chose
26 to ignore the Skelley hearing officer's findings and
27 recommendations, thus permitting the employee to be terminated
28 without him really making a decision.

1 I know Mr. Micciche wants the State Personnel Board
2 to handle this problem, but the State Personnel Board hearing
3 judge, who's been handling this matter for more than a year
4 because I represent the employee, Judge Alvarez, keeps asking
5 why the Director hasn't settled this thing in the past year and
6 a half, because the Skelley hearing officer's decisions must be
7 worth something.

8 I want to remind the Committee that these violations
9 of the United States Constitution, the Constitution of
10 California, and Americans with Disabilities Act are serious
11 matters that will not go away. I hope that whatever this
12 Committee does today will improve personnel administration in
13 the Department of Economic Opportunity, because this Committee
14 only has one opportunity to have an impact.

15 I would like to take any questions you have.

16 CHAIRMAN LOCKYER: Thank you, Mr. Lemmons.

17 Are there questions from any Member?

18 SENATOR BEVERLY: Just to refresh me, what is CAFE de
19 California?

20 MR. LEMMONS: It stands for Chicano Advocates For
21 Equality. It's a statewide organization.

22 SENATOR AYALA: Isn't this case now currently
23 awaiting arbitration, the case you have referenced? Is that now
24 currently awaiting arbitration?

25 MR. LEMMONS: No, it's not.

26 SENATOR AYALA: It is not; this is another case.

27 MR. LEMMONS: It's not in arbitration and won't be.
28 It's before the State Personnel Board.

1 MR. MICCICHE: With a scheduled hearing date.

2 SENATOR AYALA: But it will get due process; will it
3 not?

4 MR. LEMMONS: But since the decision in 1972 of
5 Skelley vs. State Personnel Board, the State Supreme Court ruled
6 that employees -- nonprobationary employees have a property
7 interest in their position, and that property interest shall not
8 be taken in violation of the U.S. Constitution or the State
9 Constitution. There must be due process.

10 This person's property was taken without due process,
11 though there was a hearing. The decision was made to dismiss
12 this employee before the decision of the Skelley hearing officer
13 was known, and this is a clear violation of -- they took her
14 property. She's on the streets and has been on the streets for
15 a year and a half.

16 And though I go back and we tried to resolve this,
17 but it was further -- the process was further complicated
18 because Mr. Micciche has never made a decision on this matter.
19 She was terminated under the terms of the adverse action, which
20 was written before the employee was -- went to a Skelley
21 hearing.

22 SENATOR AYALA: The Skelley was never terminated or
23 completed?

24 MR. LEMMONS: The Skelley hearing is conducted by a
25 state Skelley hearing officer.

26 SENATOR AYALA: I know what that is, but I'm not
27 asking you that. Was the end result ever --

28 MR. LEMMONS: Yes, yes.

1 SENATOR AYALA: -- public?

2 MR. LEMMONS: Yes.

3 SENATOR AYALA: What was that opinion?

4 MR. LEMMONS: The decision came out the next -- two
5 days later, from what I gather. At least, that's when I got my
6 copy.

7 SENATOR AYALA: Indicating what?

8 MR. LEMMONS: Indicated that the charges were not
9 supported, and that they were, frankly, petty, and she
10 recommended against termination. But she was terminated anyway.

11 MR. MICCICHE: May I respond to that?

12 CHAIRMAN LOCKYER: Yes.

13 MR. MICCICHE: I take it back; this is the hardest
14 part.

15 CHAIRMAN LOCKYER: I'm sure it's hard for Mr. Lemmons
16 as well.

17 MR. MICCICHE: Sure.

18 I'd like to vehemently disagree with some of the
19 statements.

20 First of all, I did make a decision; and I'll stand
21 behind the decision. I terminated this person who deserved --
22 may I finish?

23 MR. LEMMONS: Sure.

24 MR. MICCICHE: Who deserved to be terminated.

25 The Skelley hearing officer recommended that we do
26 something less than termination; did not say there were
27 unsubstantiated charges.

28 We chose to terminate. There'd been a long history

1 with this employee.

2 This is in, as Senator Ayala said, it is in due
3 process. Judge Alvarez, at the last SPB hearing, in fact said
4 we followed due process.

5 This hearing is going before him or another judge at
6 SPB March 15th, 16th or 17th. I think, frankly, that's where it
7 belongs. If you want to discuss it here, we can discuss it, but
8 it belongs at that hearing. It does not belong here, I do not
9 believe.

10 Our history in this Department is just the opposite
11 from what Mr. Lemmons is talking about. Our current affirmative
12 action goals and numbers indicate we are over parity in disable
13 hiring; we are at or over parity in every other category. There
14 is no history there.

15 There were six cases that came up against the
16 Department in the previous administration, back in 1992. All
17 six were dismissed by the Federal Equal Opportunity and
18 Employment Commission as having no merit.

19 So, I take real umbrage with this kind of activity.
20 And to say I'm not accessible, I made the proper and appropriate
21 person accessible to Mr. Bocanegra and Mr. Lemmons, the person
22 who handles personnel in my Department. They chose not to.
23 They chose not to meet with her because -- and I have notes that
24 indicate this and messages that indicate this -- because they
25 wanted to meet with me regarding my confirmation, not about
26 resolving this case; about my confirmation.

27 I didn't feel like I wanted to be blackmailed in that
28 regard.

1 CHAIRMAN LOCKYER: Well, I think, Mr. Lemmons, you'll
2 appreciate the fact, as will all present, that we're not the
3 appropriate body to resolve specific personnel problems.

4 I guess our role would be, perhaps, to intervene if
5 there were some pattern that was disturbing, that reflected on
6 someone's personal qualifications.

7 MR. LEMMONS: Could I respond?

8 CHAIRMAN LOCKYER: Yes.

9 MR. LEMMONS: Mr. Micciche has never made a decision
10 known to the employee, to me, or to the State Personnel Board.

11 Now, as for the proper authorities to handle this,
12 yes, there are proper authorities.

13 However, state employees these days have very, very,
14 very little confidence in the State Personnel Board and the
15 decisions that come out of the Personnel Board.

16 I've tried on numerous occasions to get such matters
17 as this before the Senate Employment and Retirement Committee
18 without success. I can't get past the assistant. The first
19 time I talked with the assistant, he's talking to me, but he's
20 brushing his teeth. The next time, he's carrying on a
21 conversation with his mother, and he says, "That's okay. I can
22 talk to you both at the same time." Well, that doesn't work.

23 Now, as far as making a person available in the
24 Department of Economic Opportunity, when we called to make a
25 request to speak with Mr. Micciche, because to speak with his
26 special assistant is, to us, very useless. It has never worked.
27 It is just useless for us to even comment about it.

28 CHAIRMAN LOCKYER: Okay, thank you, sir.

1 MR. LEMMONS: Thank you.

2 CHAIRMAN LOCKYER: Mr. Micciche, did you want to add
3 anything else in conclusion?

4 MR. MICCICHE: Well, I just -- again, I think the
5 record speaks for itself, both mine and the Department's.

6 If the question or the call had been to sit down and
7 try to resolve this matter for the client's benefit one way or
8 another, I would have been there to do that. And this has never
9 been the request, and it's always been, "We want to talk to you
10 about your confirmation and before your confirmation." And I
11 don't think that's in the best interests of the client.

12 Due process will take place. We'll abide by whatever
13 that decision is. We will obey the law.

14 CHAIRMAN LOCKYER: Is there anyone else present who
15 would wish to comment?

16 Questions or comments from Committee Members?

17 Is there another gentleman? Yes, please come up.

18 MR. TREVISO: Good afternoon, distinguished Senators,
19 Senator Lockyer.

20 My name is Ruben Treviso with the Veterans in
21 Community Services. Some of you are familiar with me.

22 The Veterans in Community Services Board, and its
23 members and constituents, has been involved in the area of civil
24 rights and advocacy for over four decades. From our Board of
25 Directors have come: the Chairman of the Equal Employment
26 Opportunity Commission; the Chairman of MALDEF; the Chairman of
27 Latino Issues Forum; the Chairman of Public Advocates, and
28 various members of the United States Civil Rights Commission.

1 So, we're a little bit familiar with civil rights advocacy and
2 affirmative action. As a matter of fact --

3 CHAIRMAN LOCKYER: What's your view with respect to
4 this nomination?

5 MR. TREVISO: We request his total support, because
6 we have seen Mr. Micciche. I, myself, during my tenure in
7 Washington as the National Director of the American G. I. Forum,
8 had knowledge of Mr. Micciche at the federal agency at CSA.

9 Also during my tenure in Washington, as the staff
10 coordinator of the National Hispanic Organizations, I dealt with
11 every Hispanic organization in the nation, and they hold the
12 same high esteem, opinion, that I hold of Mr. Micciche.

13 CHAIRMAN LOCKYER: Thank you, sir.

14 MR. TREVISO: If you want more confirmation of that,
15 you may read my article in the Hispanic Link.

16 Thank you.

17 CHAIRMAN LOCKYER: Thank you, sir.

18 MR. GARCIA: Mr. Chairman, Members, my name is Bill
19 Garcia. I'm the State Advisor for the American G. I. Forum of
20 California. You have a letter of support for Mr. Micciche in
21 front of you, I believe.

22 I just wanted to add to that that in the past, on
23 many occasions, the Forum has served as an intermediary or
24 mediator on issues that have just been mentioned here, which I
25 was somewhat unaware of.

26 Our support for Mr. Micciche stands as strongly as it
27 was portrayed in that letter.

28 I will be talking to Mr. Micciche in the future to

1 see if there is some way we can get this issue that was
2 presented, perhaps, resolved informally.

3 I just wanted the panel to know that, the
4 confirmation Committee.

5 Thank you for your time.

6 CHAIRMAN LOCKYER: Thank you, sir.

7 MR. VAYS: Mr. Chairman, Members, my name is Zigmund
8 Vays. I am the Chairman of the Legislative Committee for
9 Southern California Association of Energy Programs.

10 I'm here to voice my complete and full support for
11 the confirmation of Mr. Micciche, to which extent our
12 Association wrote a letter which is on file with Ms. Michel.

13 It is not my place to comment on certain allegations
14 which have been made before, except to say that I am an
15 immigrant from Russia. And the reason I'm here, and I'm blessed
16 to be here, is because I have been severely discriminated
17 against because of my faith, because of my religion, because of
18 my ethnic background. So, I'm very sensitive to this issue.

19 And even to suggest that Mr. Micciche, or the
20 majority of the members of the Department, have any bone of
21 discrimination, I believe to be ridiculous.

22 Once again, it's not my place to comment on the merit
23 of the case. I would like only to point out the two issues
24 which, Mr. Chairman, you kindly mentioned before.

25 As far as the allocation for the Department of
26 Economic Opportunity, while there is a proposed 51 percent
27 reduction in LIHEAP funding, there is a proposed at least 50
28 percent increase in funding for authorization programs through

1 the Department of Energy, which is a different source of
2 funding, which to some extent can supplement and complement and
3 offset the reduction in funding for the LIHEAP, which would
4 allow the Department to stay as a valuable asset of the state
5 government.

6 And to that extent, I would like to present a copy of
7 the federal budget here.

8 I represent the area which was severely affected by
9 the earthquake. And the services which are provided by the
10 Department of Economic Opportunity are of vital importance to
11 the victims of this earthquake which occurred in the Los Angeles
12 area. And it is to the best interests of the population of Los
13 Angeles County and other counties which have been affected, and
14 the lower income population of the entire state, that this
15 department is going to be around in as stable, efficient manner
16 has it has been around by Mr. Micciche during his term as
17 interim Director and then as appointed Director.

18 CHAIRMAN LOCKYER: Well, I guess it's hard not to ask
19 whether your Association or your members receive state grants
20 from the office?

21 MR. VAYS: Most of -- we are an association of
22 community-based organizations and also some public utilities
23 companies as well. And we do the kind of work which -- there's
24 a state mandate of the Department of Economic Opportunity to
25 contract out with different community-based organizations.

26 In no way would I be testifying over here. My
27 funding has been reduced, not because of Mr. Micciche, but
28 because of the federal reductions.

1 And obviously, while -- I'm not here to testify on
2 behalf of the funding situation, but I'm here to testify as to
3 my experience as the Chairman of the Legislative Committee,
4 working with Mr. Micciche to find new, innovative ways to
5 optimize and maximize the state's resources to work with -- on a
6 bipartisan basis with the Legislature. I have right here two
7 letters which were written by Senator Rosenthal, Chairman of the
8 Energy Committee, on the federal LIHEAP.

9 And I simply believe that at this point in time, the
10 Department needs stability, and it needs a director who is
11 competent in the issues which are of major consideration to the
12 victims of the disaster area.

13 CHAIRMAN LOCKYER: Thank you, sir.

14 What's the pleasure of the Committee? Oh, is there
15 another? Yes, sir, I'm sorry.

16 MR. GONZALEZ: Mr. Chairman, fellow Senators, my name
17 is David C. Gonzalez, and I'm a member of the Association of
18 Southern California Energy Providers, and I'm the vendor rep.
19 for that organization, which is the private sector.

20 My statement is very simple. I've watched DEO, and
21 it's gone through many directors. And this gentleman sitting
22 next to me is probably the best Director I've ever seen there.

23 Thank you very, very much.

24 SENATOR AYALA: I would move the appointment.

25 CHAIRMAN LOCKYER: We have a motion by Senator Ayala
26 to recommend confirmation.

27 Call the roll, please.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly Aye. Senator Petris.
5 Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Craven Aye. Senator
8 Lockyer.

9 CHAIRMAN LOCKYER: Aye.

10 SECRETARY WEBB: Four to zero.

11 MR. MICCICHE: Thank you very much.

12 CHAIRMAN LOCKYER: We also have Mr. Smith who is
13 here, the Director of the Office of Administrative Law.

14 MR. SMITH: Good afternoon.

15 CHAIRMAN LOCKYER: Do you want to start by telling us
16 anything about you and your responsibilities?

17 MR. SMITH: Certainly, Senator.

18 I'd first like to thank you, Senator and Members of
19 the Committee, to be here today.

20 I first arrived at the Office of Administrative Law
21 in March of 1986. At that time, I was appointed Deputy Director
22 and confirmed by the Senate. I served in that position until
23 October of 1991, at which time I was appointed Director to
24 complete the term of the last administration. I then -- when
25 that administration left, I carried on as acting Director until
26 May of 1991, at which time I was again appointed Director and
27 confirmed by the Senate as Deputy Director. Then in August of
28 '92, I was appointed Director and I appear before you today.

1 I've been with OAL for close to eight years now.
2 I've been involved in every aspect of the Office, legal and
3 administrative. I believe those qualifications are sufficient
4 for this position.

5 CHAIRMAN LOCKYER: What kind of lawyering did you do
6 prior to this work for government?

7 MR. SMITH: In private practice, I was first in
8 general practice, did a variety of things. Then I was in
9 insurance defense work.

10 CHAIRMAN LOCKYER: Are there questions from Members?
11 Well, I guess I'll start, just to learn a little more
12 about you.

13 You've had staff reductions, as I guess most --

14 MR. SMITH: Approximately 50 percent.

15 CHAIRMAN LOCKYER: Almost 50 percent? In how long a
16 time?

17 MR. SMITH: Over the last two and half years.

18 CHAIRMAN LOCKYER: How has that changed your ability
19 to get the basic job done? What's been the consequence of those
20 cuts?

21 MR. SMITH: Very candidly, the basic job hasn't
22 changed. We're doing the same quality of work.

23 What we have done -- what I did when we had those
24 huge reductions was eliminate all middle management, everything
25 that we weren't absolutely required to do by statute.

26 So, the job we did then continues, it's just we don't
27 do anything extra.

28 CHAIRMAN LOCKYER: Are there complaints about delays

1 in approvals from some of the departments or agencies?

2 MR. SMITH: No. We're statutorily limited to 30
3 working days. Occasionally we can get something out quicker,
4 but with the staff we have, we really can't do that.

5 CHAIRMAN LOCKYER: You schedule it in that way?

6 MR. SMITH: Correct.

7 The one area where we are constantly struggling to
8 keep a schedule is in the other program where we issue legal
9 opinions as to whether something is an underground regulation.
10 That does not have time lines on it. I used to be able to
11 devote two or three attorneys to that process, but I can no
12 longer do that. So, that process --

13 CHAIRMAN LOCKYER: Is there anyone doing it?

14 MR. SMITH: Yes, but it's allocated throughout the
15 staff now, and with the time deadlines in the other program,
16 it's just slowing everything up.

17 CHAIRMAN LOCKYER: Can you quantify the sort of work
18 you do? How many reviews do you have to do a year?

19 MR. SMITH: We get approximately 1,000 rule-making
20 files every year. That's the file that contains the text, and
21 the comments, and everything that has transpired during that
22 process.

23 That equates to roughly 20,000-25,000 regulatory
24 sections. A section can be a paragraph or three pages.

25 We disapprove roughly 6,000 sections a year.

26 CHAIRMAN LOCKYER: Out of how many?

27 MR. SMITH: Out of 20,000-25,000.

28 CHAIRMAN LOCKYER: So, one-fourth, or so?

1 MR. SMITH: Roughly. And most of those -- probably
2 80 percent of those that we have disapproved do come back to us
3 and are approved. There is a small percent, 20 percent, that
4 don't come back because -- generally because they're not
5 consistent with what the Legislature's told them to do.

6 CHAIRMAN LOCKYER: So, 20 percent of the 6,000 --

7 MR. SMITH: Correct.

8 CHAIRMAN LOCKYER: -- they vanish?

9 MR. SMITH: Yes.

10 CHAIRMAN LOCKYER: Are there notable ones that come
11 to mind that were significant departures from the statutory
12 requirements that you can remember?

13 MR. SMITH: One that comes to mind, and I don't mean
14 to be picking on any particular agency, but it only comes to
15 mind because it was around for so long.

16 The Board of Pharmacy wanted to create a new class of
17 people to dispense controlled substances. They called them
18 pharmacy technicians, I believe. They submitted that regulation
19 to us creating this new group of people. The problem was, there
20 was no authority to do that.

21 We disapproved them; told them to go back to the
22 Legislature. Unfortunately, they resubmitted it two more times,
23 making minor adjustments, but still with the basic inconsistency
24 problem.

25 They finally appealed it to the Governor's Office.
26 The Governor's Office upheld our decision, and then they went to
27 the Legislature and got the legislation to do it. That took
28 about a year and a half.

1 CHAIRMAN LOCKYER: Can the Governor overrule you?

2 MR. SMITH: No, the Governor upheld our decision.

3 CHAIRMAN LOCKYER: But if the Governor disagreed with
4 you, would that produce a different result?

5 MR. SMITH: If the Governor disagrees with a
6 disapproval by OAL, we have to immediately file it with the
7 Secretary of State and then it becomes law.

8 We've only been overruled, I think, in the history of
9 OAL, maybe twice.

10 CHAIRMAN LOCKYER: Can you quantify the 20 percent
11 that are those that are submitted which are deemed to be
12 violative of the statute and they disappear in terms of the
13 policy areas, or segment of government that you tend to see
14 large numbers of those circumstances?

15 MR. SMITH: Not really. We don't -- I haven't
16 thought about it in those terms, but I don't see that it's in
17 any particular area.

18 CHAIRMAN LOCKYER: You don't have an impression that
19 there's some certain area?

20 MR. SMITH: Not really. It's really kind of across
21 the board.

22 CHAIRMAN LOCKYER: How about the Department of
23 Insurance?

24 MR. SMITH: Not so much them, although we obviously
25 had some problems in the last year.

26 CHAIRMAN LOCKYER: What was the nature of those
27 problems?

28 MR. SMITH: The generic problem that the Department

1 of Insurance had is the same problem that Health and Welfare had
2 a number of years ago with Prop. 65. They were dealing with a
3 proposition that was, in my opinion, very poorly written in
4 certain aspects.

5 My policy, if there is one, is that when you see
6 regulations implementing statutes that are ambiguous, but if an
7 agency chooses an interpretation which on its face is not
8 inconsistent, it may not be, in my opinion, what the right
9 policy ought to be, but that's not my job anyway. But it may
10 not have been my choice, but as long as it's in a plausible
11 interpretation, we will usually approve those and let the courts
12 work it out.

13 That's the problem that I think Insurance has faced.

14 CHAIRMAN LOCKYER: But you didn't approve in some
15 circumstances.

16 MR. SMITH: Correct.

17 CHAIRMAN LOCKYER: And that was because the law was
18 silent, or ambiguous, or contrary to the regulations?

19 MR. SMITH: Where we approved them on the first
20 instance, they -- again, it might have been a close call, but we
21 went ahead and approved it. There were, I believe, two
22 instances when our disapproval of it was appealed to the
23 Governor, and the Governor overruled us.

24 CHAIRMAN LOCKYER: Are there questions from Members?

25 Is there anyone present who would wish to make any
26 comment?

27 How many lawyers do you work with?

28 MR. SMITH: We have eleven lawyers now.

1 CHAIRMAN LOCKYER: What's the hardest part of your
2 job?

3 MR. SMITH: I've always enjoyed it, so I really don't
4 -- the hardest part, I think, is when you get into some very
5 knotty statutory interpretation and looking at the regulations
6 to see if it's consistent. That's probably the most difficult.

7 CHAIRMAN LOCKYER: Just sort of legal analysis, in
8 effect.

9 MR. SMITH: Right.

10 CHAIRMAN LOCKYER: I can see how that would be fun if
11 you're the type that likes it.

12 All right, what's the pleasure of the Committee?

13 SENATOR BEVERLY: Move we recommend confirmation.

14 CHAIRMAN LOCKYER: We have a motion by Senator
15 Beverly to confirm and recommend confirmation.

16 Call the roll, please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye. Senator Petris.
22 Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Craven Aye. Senator
25 Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Four to zero.

28 MR. SMITH: Thank you.

[Thereupon this portion of the
Senate Rules Committee hearing
was terminated at approximately

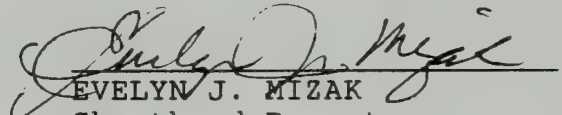
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of February, 1994.


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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR AL ALQUIST

WARDELL A. CONNERLY, Member
Regents of the University of California

PAUL MEYER
Consulting Engineers and Land Surveyors of California

KIM ALEXANDER

LESTER H. LEE, Ph.D., Member
Regents of the University of California

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We'll start with the gubernatorial appointees to the University of California Board of Regents. I believe Chair of the Budget and Fiscal Affairs Committee, Senator Alquist, was going to open this segment.

SENATOR ALQUIST: I'm here this morning, Mr. Chairman and Members, to introduce and recommend the confirmation of Lester Lee and Ward Connerly to the Board of Regents of the University of California.

Both of these gentlemen have outstanding records in business and in their professions. They have been like a breath of fresh air on the Board of Regents in the months that they have served there, and they are probably the best appointments that Governor Wilson has made in the three and a half years that he's been Governor.

So, I would urge you to confirm these two gentlemen to this position.

CHAIRMAN LOCKYER: Thank you, Senator.

I guess the appropriate order would be to ask Mr. Connerly to join us first. You seem to be first in the batter's box, sir.

You might want to begin with any opening statement that just summarizes your perspectives and qualifications.

MR. CONNERLY: Thank you, Senator.

First, let me thank Senator Alquist for his consenting to introduce us to you. It's a source of great comfort to me to have someone with his background, and

1 dedication, and service to this state to place his imprimatur on
2 my appointment.

3 I also want to thank the Governor for honoring me
4 with this appointment. I didn't ask for this. I had just
5 completed a year of service as a member of the Competitiveness
6 Council, and I needed a breather because I'd been away from my
7 business for one year. But I've known Pete Wilson for a long
8 time, and breather is not part of his vocabulary, it seems. So,
9 it was with some agony that I paused and considered the issue of
10 appointment to the Board of Regents.

11 After looking at the challenges that the University
12 faces, I came to the conclusion that there is nothing more that
13 I would rather do than to offer some service to my state in this
14 regard, and the last 11 months have ratified the wisdom, I
15 think, of doing that. It has been a challenge. The years ahead
16 are going to be equally more challenging because there are
17 changes that we have to make on that Board.

18 There is no greater public trust, in my view, in
19 California than higher education and the University of
20 California. And it's something that I have developed a high
21 affection for and am eager to get on with the business of
22 governing the -- playing my role in governing the University of
23 California.

24 So, it's with that background, Mr. Chairman, that I
25 am delighted to be here and appreciate your considering me.

26 CHAIRMAN LOCKYER: Thank you.

27 Senator Ayala.

28 SENATOR AYALA: Mr. Connerly, historically, the

1 student fees, costs, that are not directly related to
2 instruction, such as athletic events and health care, have risen
3 tremendously in the last few years. The UC has proposed a fee
4 increase of \$620 per year, 18 percent. And for the first time
5 ever, they tied student fees to instruction tuition.

6 How do you decide what to increase, and at the same
7 time, the salaries of the administrators are outrageously going
8 up?

9 It seems to me we're defeating the purpose of our
10 educational system when we, perhaps, are denying some of the
11 students entrance into the University system or college system
12 because of the lack of funds, and at the same time the
13 administrators are getting salaries that are higher than the
14 Governor. You can never convince me that their responsibility
15 is greater than that of the Governor.

16 How do you determine the fee increases that you have
17 provided the last few years for the students?

18 MR. CONNERLY: Senator, let me just kind of give you
19 some perspective that I bring to that.

20 The University of California is, obviously, an
21 institution of great prestige. Quality is sort of the hallmark
22 of the University, and we pride ourselves on that brand name of
23 the University of California and the quality that we hold.

24 When the economy of California took a turn south
25 three years ago, almost four years ago, and the Legislature and
26 the Governor had to necessarily cut back on the funding to the
27 University of California, the University still felt that we had
28 an obligation to maintain quality. Whatever that terms means,

1 we felt that we had an obligation to maintain quality.

2 So, the administration has brought to the University
3 proposals that were designed to fill the void of the revenue
4 that we lost. The belief is that if we don't maintain the
5 salaries that we're providing, we will lose the quality of
6 faculty and administrators that we have.

7 Now, I don't happen to share that view, but I'm still
8 burdened with that because I'm a member of the Board of Regents,
9 and once the Board votes, whether I'm on the losing side or the
10 winning side, I have to carry the burden of the decision that
11 the majority makes, because we are governed by a majority.

12 But I must tell you that the decision that we face
13 right now is the most crucial decision that we will ever make
14 because, on the one hand, we have this level of quality that I
15 think the people want us to maintain, but we also have the fact
16 that access is being influenced. And everytime, in my view, we
17 increase fees, we're diminishing access. It's like a
18 teeter-totter: access on the one hand, and quality on the
19 other.

20 And I would rather, and this is probably heretical to
21 say, but I would rather have a "B+" University of California
22 that the masses can attend rather than to have an "A" University
23 of California that only the rich can attend.

24 Now, my colleagues, many of them won't agree with
25 that, but that's where I come down. I'd prefer access. I have
26 voted consistently in favor of ensuring access.

27 Now, your question was: how do we determine that.

28 Largely it's determined by what we think we need to

1 maintain that quality, and what we're getting from the state.
2 When the state reduces its funding, we have to fill that void
3 with fees, at least that's the perception, that we have to fill
4 that void with fees.

5 I believe that we can look at other things. We can
6 look at cost containment. We can look at greater productivity.
7 We can look at a number of things.

8 But that's the methodology that we use.

9 SENATOR AYALA: Maybe we can get the professors to
10 work more than an hour or two a week for instruction purposes.
11 I know that they will probably look down on that, but when you
12 talk about productivity, we ought to go after that.

13 And I agree totally that we would prefer a "B+"
14 institution and allow access to a lot of students than to have
15 an "A" institution that nobody can attend.

16 How do you propose to vote in the future in terms of
17 the tremendous administrative salaries that we're paying, and
18 the perception up and down the state that you folks don't know
19 what you're doing? I'm sorry to say that, but I know that's not
20 true. I know that you people are professional; you have your
21 own businesses, successful, and all that, so I think that's not
22 the case. But the perception up and down the state is that the
23 Regents of the Board really don't know what they're doing when
24 they gave these people -- the perception is that if it was your
25 money, you wouldn't do that. But since it's tax dollars, who
26 cares?

27 MR. CONNERLY: I know that that perception is out
28 there. I think that the University has certainly suffered

1 greatly, in my view, in the last few years as a result of a
2 number of decisions that were made, some recent, I think. I'm
3 very much aware of that, and I don't think it's worthwhile for
4 us to deny that we've lost a lot of confidence in the public's
5 mind.

6 My own view is that I'm not convinced that we're
7 really going to suffer this great erosion of quality by taking a
8 hard look at salaries. I'm not opposed to holding the line on
9 salaries, I'll tell you right now. I think that our whole
10 salary structure needs to be examined.

11 I know that in the private sector, we don't say: we
12 have this person making this much, and then 10 percent below
13 that, somebody else, and 10 percent below that. Frequently,
14 there's a major gap between the top and the next level.

15 Our whole structure is a pyramid that's almost 10
16 percent up, each layer, and I think we've go to hold the line on
17 that.

18 And I'm not afraid to take a vote in favor of that
19 once I've looked at the facts and am so persuaded.

20 SENATOR AYALA: I realize there's packages that are
21 approved by, you know, other Boards that are binding on you as
22 well, and others to come in the next few years. I think that's
23 the problem. We bind future Boards with some contracts with
24 these individuals that are very hard to really relate to them.
25 And yet, we're bound by a former contract that we cannot
26 resolve.

27 How do you intend to do it in the future? Are you
28 going to water down some of the contracts that you provide these

1 administrators?

2 MR. CONNERLY: Let me just say one thing.

3 I know that the Legislature and the public is awfully
4 anxious that we get on with the business of reforming the
5 institution and getting into the real world.

6 You need to understand, I think, that we need to
7 exercise some caution. We don't really want to jump and make
8 decisions just on the basis of what we happen to believe at the
9 moment is the case.

10 The University, for good or bad, operates on the
11 basis of shared governance. The Regents share governing with
12 the administration. The administration shares it with faculty
13 and, to a lesser extent, students and other members of the
14 University family.

15 Because of that concept of shared governance, things
16 don't happen very rapidly in the University of California.
17 Progress happens inch, by inch, by inch. It's going to take a
18 lot of time, I think, before we change the culture of the Board
19 of Regents where we can really examine a lot of the things that
20 have occurred in the past.

21 I think that there is a majority there to do that.
22 I'm convinced that there is a majority to do that. I'll tell
23 you right now, if there wasn't, I wouldn't want to be confirmed,
24 because I don't want to sit there for the next 11 years being
25 one person out there crying no and voting no on the losing side
26 of every vote that's taken.

27 SENATOR AYALA: I recognize that the University of
28 California and Stanford, and other good universities, are

1 considered tops in the world in terms of the academics, and we
2 don't want to water that down.

3 But I don't think that providing these administrators
4 and these other folks the tremendous salaries will improve that
5 or water it down. I think we should concentrate, like you say,
6 on other areas that are not -- well, like we have to do it here.
7 The same thing; we have the same problem here. We don't want to
8 water down services, but on the other hand, we have to remove
9 some of them because we can't afford to continue paying for what
10 we're doing out there.

11 MR. CONNERLY: Also, give us a little time. I mean,
12 show a little patience with us. It may appear to you in some
13 cases that salaries are outrageous, but let us really go in and
14 examine them.

15 We don't want to play Russian Roulette here with the
16 University's future. We really want to be cautious and to take
17 a look at all of the things.

18 But the most important thing is, we have to be
19 prepared to examine. We have to be prepared to do that.

20 SENATOR AYALA: I have no choice but to be patient.

21 Thank you.

22 MR. CONNERLY: Thank you, Senator.

23 CHAIRMAN LOCKYER: Mr. Connerly, how would you
24 characterize or describe the culture that you've indicated needs
25 some review and eventual change? Could you describe the current
26 culture and the direction you'd wish to take it?

27 MR. CONNERLY: Senator, as I said, we have one of
28 shared governance. And when you recognize that -- and when

1 times are good, and the fountain of money is flowing freely to
2 the University of California, shared governance works well.

3 When you have to make tough decisions, it's very
4 difficult to convene this big community to make those tough
5 decisions.

6 I believe that the administration -- and we have an
7 excellent administration. Jack Peltason is the right man for
8 the times. But there are pressures within the institution on
9 the administration that I don't think that they can respond as
10 quickly as I, as an activist kind of person, would like to see
11 them respond. Plus the fact, in addition to that whole concept
12 of shared governance, we have this collegial atmosphere of
13 Regents that come on, and you're sort of seduced by the
14 trappings of the office, if I can be candid with you, and you
15 come into that, and you're influenced by all the trappings of
16 the office. You don't want to micro-manage, which is another
17 term that we hear a lot about. You don't want to show any lack
18 of confidence in the administration.

19 So, all of that builds an environment in which, as
20 Regents, we, of our of accord -- not that anybody is telling us:
21 hey, keep your mouth shut -- but of our own accord, we're very
22 reluctant to come forward.

23 And I'm not the only one that senses that. I mean, a
24 lot of my colleagues also sense that. That's no one's fault but
25 our own, and it goes to our understanding of what it means to be
26 a trustee of a public trust, of a public institution.

27 That culture right now has to be changed so that we
28 really understand what it means to govern.

1 CHAIRMAN LOCKYER: Good general thought.

2 I happened to note, in looking at your vita, that you
3 were studying political theory in 1962. Me, too. And I can
4 tell from the language that that still has lingered.

5 MR. CONNERLY: But I also practice it.

6 CHAIRMAN LOCKYER: Good. Me, too, I hope.

7 [Laughter.]

8 CHAIRMAN LOCKYER: Anyhow, Jacobson, Sheldon Wolin
9 and Schaar that were the three in my universe, that's part of
10 your responsibility.

11 Let me ask you about these two particular ongoing
12 issues, and how this desired change in the culture might be
13 impacted.

14 One relates to the salary budget kind of discussions
15 that Senator Ayala had touched on, and that is to look at the
16 ten-year trend. We find that the administrative salaries have
17 increased at about twice the level, a little under 10 percent,
18 of the faculty salaries, which are about six.

19 That seems topsy-turvy to me. If the function of the
20 University is mostly to teach, the administration is there to
21 support that, not vice-versa.

22 And I would ask you to just comment in any way on
23 that trend, and how you feel about it, and what you would expect
24 might be, if anything, done about it.

25 MR. CONNERLY: I'm not sure what we're going to be
26 able to do about it.

27 I don't agree with the trend. I don't agree with it
28 at all.

1 As I indicated, I think that the pyramid that we've
2 created is one that is going to be very difficult for us to
3 change without exacting an awful lot of pain. I'm prepared to
4 exact that pain, personally.

5 I just think that it's okay to pay the President, the
6 Chancellors, if you will, the top dog in the institution, the
7 high -- a salary sufficient enough to attract that person.

8 I think you can drop down, however, from that and
9 have quite a bit of a gap between the top person and the next
10 person. I think that we're heavy in the middle-management side.
11 And it's largely because of this ladder, this pyramid.
12 Everybody starts down from the top. We have the top salary, and
13 then 10 percent below that, and 10 percent below that, and so
14 you get a lot of -- not fat -- you get a lot of salaries in
15 between there that I think are probably out of line with the
16 private sector. They're out of line with the realities of
17 California.

18 They were not five years ago, but given the
19 down-sizing that has taken place in this economy, in every
20 sector of our economy, and with the University not doing that,
21 with the administration not really down-sizing the way we are --
22 we've pushed people out through early retirement and other
23 things -- we haven't made the structural reforms that we need to
24 make.

25 CHAIRMAN LOCKYER: A second trend I wanted to inquire
26 about relates to the statutory and stated goals of having the
27 University student body reflect as much as possible the
28 diversity of the state.

1 As you know, the percentages of Afro-American and
2 Latino graduates is about one-half to one-third of the similar
3 demographic characteristics of California.

4 What thoughts do you have about that situation and
5 possible, if any, solutions?

6 MR. CONNERLY: The University needs an awful lot of
7 help at K-12 and other places before they get to us. The
8 University can do all that it can to reach out and try to
9 recruit people to the University, but you have to give us that
10 pool of candidates to begin with.

11 I think that we need to start -- and part of this is
12 fees. We need to instill in people that sense of wanting to go
13 to college.

14 There wasn't a day that I lived growing up when my
15 grandmother, with a switch, didn't stand beside me and say,
16 "You're going to do your studies to go to college."

17 We have lost, I think, that sense of dedication to
18 higher education. It's not just the University; it's the whole
19 society. People, I think, are believing that the University is
20 there for middle-income white kids, and the whole idea of the
21 State of California helping to prepare people throughout the
22 economy to go to college is eroding. We're losing it.

23 Now, we can reach in through affirmative action and
24 bring some of them in there, but you have to do a better job as
25 a society in getting them ready to come to the University of
26 California.

27 CHAIRMAN LOCKYER: Is there a legitimate role for
28 some of the affirmative action efforts in your view?

1 MR. CONNERLY: I think there's a legitimate role for
2 that.

3 I think with regard to affirmative action, we need to
4 start examining that. I'm not altogether pleased with the
5 results.

6 If you look at our faculty, for example, we've gotten
7 the numbers up. We have people in the door; we have the numbers
8 up. We've changed the culture of the University. But a lot of
9 the people that are there, minorities that are there, are in
10 peripheral positions. They're in Affirmative Action Officer
11 positions; they're in Student Services. They're not in the
12 mainstream of the University.

13 So, I think we need to take a hard look at
14 affirmative action, for example. And I take some heat for that.
15 But if we're going to be critical of the whole University, we
16 have to be critical of everything; examine all of it.

17 CHAIRMAN LOCKYER: What is it in the affirmative
18 action universe that you would be concerned about?

19 MR. CONNERLY: I'm concerned --

20 CHAIRMAN LOCKYER: You mentioned the one, that it
21 might not be genuine enough, or mainstream enough. What else?
22 Anything else?

23 MR. CONNERLY: That's the main thing. I'm really
24 concerned, and I have some personal problems, with the idea of,
25 if all things are not equal -- if all things are not equal --
26 for us to give what amounts to preferential treatment.

27 Once the culture has been changed, if we admit that
28 the culture has been culture has been changed, I am not one who

1 believes that we go back and that we protect, or that we correct
2 past sins. That's just a personal view.

3 I subscribe very much to the idea of individual
4 worth, and I'm very concerned that in the University and other
5 places, that we are, in fact, beginning to discriminate against
6 people because of our desire for preferential treatment. That
7 is a personal belief on my part.

8 CHAIRMAN LOCKYER: Where does that manifest itself?

9 MR. CONNERLY: I think it manifests itself in some of
10 our hiring decisions. Right now, we're looking at Chancellor
11 candidates. And I don't want to betray what we're doing there,
12 but I'm seeing practices that disturb me, based on my own
13 personal sense of values.

14 CHAIRMAN LOCKYER: It's my understanding you did
15 oppose or vote against a student fee increase, or a
16 recommendation for that.

17 MR. CONNERLY: You're correct there.

18 CHAIRMAN LOCKYER: Others? Senator Petris.

19 SENATOR PETRIS: First of all, let me say that I'm
20 very impressed with what I've seen in your activity on the
21 Board.

22 You say that the atmosphere inhibits Regents from
23 coming forward, but it hasn't inhibited you. I've seen
24 statements attributed to you severely criticizing actions of the
25 Board. I think that's very healthy, but it takes a lot of guts,
26 too, because you have that collegiality to worry about. I would
27 urge you to continue that.

28 Also, you stood alone on the fee issue; didn't you?

1 MR. CONNERLY: Regent Morris Roe and I were alone.

2 But I think that my colleague, Lester Lee -- and he
3 can speak for himself -- but the way the vote took place, it
4 took place in an atmosphere there where the committee vote was
5 being voted upon, and there was a whole package of votes that
6 took place. And I am told by some of my colleagues that had the
7 votes been severed, that the student fee issue may have had a
8 different configuration of votes than it had.

9 But for the record, I know that Regent Morris Roe and
10 I were the only ones who voted against those increases.

11 SENATOR PETRIS: On affirmative action, as one who
12 strongly supported it through the years, I know that mistakes
13 are going to be made. I'm reminded of Franklin D. Roosevelt's
14 paraphrasing of Dante: It's better for government to make
15 mistakes in pursuit of a noble goal than to be frozen in its icy
16 indifference to the problems of people.

17 So, I'd rather have the affirmative action in place,
18 and have you working to improve it, and us working to improve
19 it, than not having embarked on it in the first place.

20 Actually, the fact that you're here was influenced
21 greatly, I'm sure, either subliminally or directly, by the
22 climate of affirmative action. I mean, there's nobody else on
23 that Board appointed by a Governor who looks like you. I think
24 that's deplorable. Willie Brown is there, but he's not
25 appointed by the Governor; that's by virtue of his office.

26 I'd feel more comfortable if there were more persons
27 of your stature, first of all, in business, and in your
28 appreciation of the importance of the academy and our

1 universities, and of your independence and independent thinking,
2 who are also of your particular ethnic or racial background,
3 too. They're out there. We just haven't reached out to them.

4 In your reviewing of affirmative action, I would hope
5 that you would bring out those good things and try to make
6 improvements, rather than be persuaded to down-grade it or
7 eliminate it. I don't think that's what you advocate.

8 MR. CONNERLY: That's not what I'm saying.

9 SENATOR PETRIS: Now on the fees. I've said this
10 before, and I want to repeat it.

11 Actually, I was late here because I was interviewed
12 by a T.V. person in which I made the statement that one of our
13 solutions should be increasing taxes. People don't say that,
14 and they're afraid of the "T" word.

15 But I think the Regents ought to be talking about
16 that. The Governor approved a tax increase in his first year.
17 I thought he was downright heroic in doing so. We also made
18 terrible, terrible cuts to make up the \$14 billion shortfall in
19 that first year.

20 He showed a lot of courage, and fought with his own
21 party to accomplish it. And I think the Governor is a very
22 decent person who wants to do the right thing, particularly with
23 education, but he doesn't have the climate to give him
24 encouragement and support. He doesn't have it in his own party,
25 first of all. He will have it in the general public if enough
26 leaders, so-called opinion makers, will talk about it more.

27 And it seems to me that to the Regents individually
28 get a chance to chat with the Governor -- he's at the meetings

1 most of the time -- if they agree, they ought to show that
2 support. It would make it easier for the Governor to lead the
3 way, or at least approve what we might be trying to do.

4 I don't see how we can come out of this fiscal
5 problem without raising more money, more revenue, not for the
6 whole amount, but for a substantial part, through raising taxes.

7 All this stuff about down-sizing, and cutting, and
8 this and that. We're never going to recover if we keep on going
9 the way we are. We're losing some of the best professors. You
10 know the story better than we do. You're actively involved in
11 it. It's horrifying to me what we've done to our higher
12 education system because we're responding to the traditional
13 remedy in hard times, and that is cut.

14 Business people are very proud that they do that. I
15 wouldn't be proud of that. I'd try to figure out other ways to
16 do it.

17 There are other countries, for example, in the
18 private sector, when they face that problem, they'll cut down in
19 other ways and not lay off a whole lot of people, you know.
20 Japan in particular has shown tremendous resilience in
21 protecting its employees and continuing the production, maybe at
22 a slower pace, maybe this, maybe that.

23 But we're ready with the axe. We just seem to love
24 that axe, and we just love to cut and cut.

25 And when you talk about the culture of the Regents, I
26 hope that part of the culture might be given some change, too.

27 On salaries, in the private sector, we have the
28 widest gap between the top level and the bottom level of any

1 industrial country in the world. It's astonishing. That's part
2 of your culture on the Board. I mean, that's the way the world
3 works. It doesn't have to be that way. I think we might want
4 to review that as well.

5 Actually, I was going to ask you a bunch of
6 questions, but I got on the soap box instead. So, let me just
7 say --

8 MR. CONNERLY: Enjoy yourself, Senator.

9 [Laughter.]

10 SENATOR PETRIS: Thank you. You're a gracious
11 audience.

12 Let me just check one thing here. I may have one
13 question. You've answered a lot of my questions in the course
14 of your statement, actually.

15 Let me ask you, on this question of student fees and
16 tuition, it actually amounts to tuition, do you see another
17 round of increases this coming year? It was announced in
18 December. How long is this going to continue? Is there going
19 to be any --

20 MR. CONNERLY: The fee model that was given to us,
21 and I would strongly urge you to read the analysis that was done
22 by Regent Morris Roe and Sara Swan with the Student Association,
23 which is just brilliant, the thrust of their analysis was that
24 there was no end to the projection of fee increases.

25 And that's one of the things that compelled me to say
26 no, we've just got to say no here, because there is no end to
27 it. It's almost \$600 as far into the future as we can.

28 And the reason is that it's based on the notion that

1 if the economy doesn't recover, the fees are basically the place
2 that we're going to get the funds for that shortfall.

3 And I think that we need to be looking for other ways
4 of doing it. If it's cost containment, or whatever it is, we
5 need to put the discipline on the administration to find other
6 ways to do it.

7 So, there is no end in sight right now to this fee
8 increase.

9 Now, I believe, however, that if we can demonstrate
10 that the increase in fees is having a deleterious effect on
11 access, I think that there is a growing majority within that
12 Board next year to say: no, we're not going to do it, and
13 certainly we're not going to do it to the extent of \$600, which
14 is what's projected right now.

15 SENATOR PETRIS: Well, it seems to me the studies
16 have already shown that impact in the other branches. I don't
17 know about a study of UC, but it had a terrible impact on the
18 access at the community college level and the State University
19 level. I don't think the UC impact would be that much
20 different.

21 MR. CONNERLY: Well, what we're seeing, Senator, if I
22 might interrupt, is, we're being told, really, by the
23 statisticians that enrollment last year compared to this year is
24 really not down; that it's up.

25 That really doesn't tell the story. It's what is the
26 universe of eligible applicants in relation to those that are
27 enrolling.

28 I think it's deterring people from enrolling in the

1 University. And it's the participation rate that I think is
2 down.

3 SENATOR PETRIS: You might have the numbers, but the
4 question is: what's the mix?

5 MR. CONNERLY: That's right.

6 SENATOR PETRIS: And are we fulfilling our purpose,
7 our mission.

8 MR. CONNERLY: That's right.

9 SENATOR PETRIS: And the way you described that
10 earlier, I think, is absolutely beautiful. We have strayed very
11 far from the original mission of accessibility with the maximum
12 mix so that people of all categories would be able to go.

13 I'm sure they can find, even at increased rates, they
14 can find lots of students from all over the country who'd be
15 happy to come, and they figure it's cheaper than going to school
16 at home, even in the public schools.

17 The Regent you mentioned is a student Regent; right?

18 MR. CONNERLY: Yes.

19 SENATOR PETRIS: There weren't any other Regents that
20 joined in that, I suppose?

21 MR. CONNERLY: The formal vote was two of us. There
22 were two of us that voted no.

23 SENATOR PETRIS: That's kind of sad.

24 MR. CONNERLY: But I think that belies the anguish
25 that was on the Board. I just want to give you some insight
26 there.

27 That vote is misleading. And I talked to a lot of my
28 colleagues before and after the vote, and there were a lot of

1 people that were on the fence there. And I think that next
2 year, if we can make the case that we should not be looking at
3 enrollment this year versus next year, but rather, what is the
4 pool out there of people who could go to the University of
5 California in relation to those that enrolled, and if we can
6 show that there's been a significant effect, I think you're
7 going to see a different vote.

8 SENATOR PETRIS: I hope so, but you mentioned earlier
9 it's beginning to look more and more like a private school as we
10 increase, because the pool is shrinking in terms of the
11 broadness of the pool. It's shrinking toward the more affluent,
12 more and more affluent. Much easier for them to pay the costs
13 than the others.

14 The other thing that worries me about it, and I'd
15 like to ask you to comment on it, is, they now seem to be
16 shifting to: well, we're going to charge the students a certain
17 percentage of the cost. Cal State says one-third of the cost.
18 We've never talked about it in those terms before.

19 Again, an old story, but I think it bears repeating.
20 When I graduated from high school, we weren't out of the
21 Depression yet. It was 1940. I was the only one from my high
22 school class -- admittedly a small one, McClymonds High in
23 Oakland -- to go to the University immediately. Two or three
24 others went in later; the rest went to work. And they put me
25 through the University with their taxes.

26 I mean, that's always been the way it is. The
27 funding of the University, higher education system, the public
28 part of it is a duty of the citizens of this state. They are

1 the direct beneficiaries. The economic gains we have had just
2 from UC alone, just from one campus, let alone all nine, have
3 been enormous.

4 That hasn't played out very well -- hasn't been
5 played out very well, I guess, by the University and its PR.
6 It's put out information, but that message hasn't gotten across.

7 So if we forget about the lofty goals of having a
8 better educated public, ad so forth, and we just talked in terms
9 of the economic benefits to this state that is offered by our
10 higher education system, we'd get a lot more support, and a lot
11 more likelihood of substituting fee increases by putting in
12 taxes instead. I just think it's a more fair way to go.
13 Everybody takes part, and the University benefits.

14 And the dwindling percentage that has been going from
15 the state to the University budget will start going back up
16 again. It's just been going down for years now.

17 MR. CONNERLY: Let me just comment on some of the
18 things you said.

19 First of all, 30 cents out of every dollar -- and
20 Steve or Betty can correct me here if I'm wrong -- but 30 cents
21 out of every dollar that we take in in fees is in fact channeled
22 back to lower-income students. So, we are in fact imposing an
23 education tax, if you will, that we're redistributing to
24 lower-income students. That is what we're doing.

25 The thing that is happening, it seems to me, however,
26 is that we are really having a very, very serious effect on
27 middle-income families. We talk about the wealthy who will only
28 be able to attend.

1 I tell the story about a family earning \$80,000 a
2 year that called me, and I met with them and talked to them
3 about their budget. And they opened their books to me. These
4 people take home about \$5,000 a month. They live in Modesto.
5 One member of the family commutes to the Bay Area because
6 housing costs are less in Modesto. Two cars: one paid for, one
7 isn't. One student going to Davis. They have an equity loan on
8 their house in addition to their first mortgage. They send her
9 about \$300 a month. They don't have \$50 a month left over for a
10 \$600 annual fee increase. The money isn't there. It just isn't
11 there.

12 So, when we increase fees, we're affecting that
13 family. This isn't a wealthy family. This is a family that's
14 living in a very modest style of life that is being priced out
15 of the University.

16 SENATOR PETRIS: That's why all of us should be
17 paying instead of those who happen to have kids in school.

18 You know, people say to me, when I go out on these
19 bond issues, for example, "I don't have any kids in school."
20 Well, I don't, either. I've never had a kid. I wasn't lucky
21 enough to have children, so I've never had a kid in school. But
22 I consider every child in this state that's in the school system
23 my child from the standpoint of my duty.

24 And that's the attitude, I think, we need to put
25 across to get more support.

26 MR. CONNERLY: I agree with you.

27 SENATOR PETRIS: Thanks, Mr. Chairman.

28 CHAIRMAN LOCKYER: One of the questions occasionally

1 asked by colleagues and press comment would have us somehow
2 consider the community involvement of appointees to positions of
3 this sort. One segment of community involvement has been
4 political participation, and it's, I guess, both subject to
5 commendation and criticism. The commendation being that people
6 are participating in a system that suffers from a lack of it,
7 and the criticism seems to be that those like yourself who have
8 been very generous, particularly in a number of civic contexts
9 and at campaign times for certain people might have sacrificed
10 independence when they involve themselves in that extensive of a
11 way.

12 I'd ask you to simply, and I don't mean it as either
13 commendation or criticism, really, but analysis, to offer any
14 thought that comes to mind as to the requisite independence of
15 the Regents. I think that's a shared value. And whether it's a
16 legitimate worry, either systemically or, perhaps, just
17 individually, Mr. Connerly, might be a fair way to discuss the
18 matter.

19 When you've been woven into the Governor's campaign
20 effort in a significant way, are you capable of being critical
21 of gubernatorial policies as they affect the University, and
22 your duties as a Regent?

23 MR. CONNERLY: Senator, that's a very fair question,
24 and let me just respond to it.

25 If I were on the outside looking at this whole
26 nomination of Connerly to the Board of Regents, and I saw where
27 he had contributed -- I think the record shows \$108,000 or
28 something -- to Pete Wilson, I would be alarmed, and I would

1 wonder: how can this guy represent the public, being there,
2 with that kind of attachment to the Governor?

3 I have known Governor Wilson since 1968. I was
4 serving in the State Department of Housing as a civil servant.
5 I didn't know him at the time. I knew then-Speaker Bob Monigan
6 for a brief period in California's history. Bob Monigan had
7 Pete Wilson call me, because Pete Wilson had just been appointed
8 Chair of the Assembly Housing Committee.

9 I went to work for him for two years. We were
10 sitting in a restaurant in Seattle, and he was talking about --
11 we were talking about what were my objectives, what was my
12 future. And I said, "Well, after I leave this committee,
13 perhaps I'll go back to the State Department of Housing, and I
14 might be a division chief, or maybe some day I'll be a Director
15 of the Department."

16 And he said, "Why are you limiting your horizons to
17 government?"

18 Well, I'm a product of the '60s from the educational
19 system. And in those days, I think that minorities,
20 particularly blacks, felt that government was a safe haven.
21 Government was a safe harbor. You didn't expect any
22 discrimination in government. So, my own career horizons were
23 limited to government.

24 And the conversation we had at that conference in
25 that restaurant there was a defining moment in my own career.
26 It caused me to think about getting out of government and
27 forming my own business. And that discussion had a profound
28 impact on me.

1 Later on, I did go into business, my wife and I, in
2 1973. We opened up a consulting business, and California's been
3 good to me. And I trace it back to that day in 1969, when I met
4 with Pete Wilson.

5 I have supported him since then. He has kept in
6 touch with my own career. And yes, I've contributed.

7 But I'll tell you this. I have a greater obligation
8 to the people of California when they put me there as a member
9 of the Board of Regents. And I have consistently said: by my
10 actions, I can be my own person. I will vote what I believe is
11 right.

12 The Governor has never called me to say, "Ward, I
13 think you ought to vote this way or that way, or whatever." I
14 don't expect that he would do that.

15 The only comments that I've had from anybody on the
16 Governor's staff is, they want us to move on with those reforms
17 that he gave us at that joint meeting of the CSU Trustees and
18 the Board of Regents last year.

19 But I think that I have demonstrated that I can vote
20 the way I believe as a member of the Board of Regents. That is
21 a public trust, and I've sworn to uphold that. I think the
22 record speaks for itself on that.

23 CHAIRMAN LOCKYER: I agree.

24 MR. CONNERLY: But I do believe in participating in
25 our society, politically and other ways as well.

26 Last year, I was the honorary Chair of the American
27 Lung Association, the Celebrity Waiters' Luncheon. It took more
28 hours from my time than I care to admit, but those are the kind

1 of things that I think you do if you're a member of the
2 community.

3 CHAIRMAN LOCKYER: Your response is thoughtful and
4 balanced. Thank you.

5 Other questions from Members?

6 Are there people in the audience that would wish to
7 comment?

8 MR. MEYER: Senator Lockyer, Members of the
9 Committee, Paul Meyer, representing the Consulting Engineers and
10 Land Surveyors of California.

11 Our members really have a lot of involvement with UC
12 engineering departments, and a high percentage of our members
13 come from there.

14 We've also gotten to know Ward Connerly very well
15 over the last few years, both through business and through the
16 Competitiveness Council. We can just speak completely for his
17 integrity, and most importantly, his can-do attitude. I mean,
18 he's really a performer. It's not empty rhetoric.

19 CHAIRMAN LOCKYER: Thank you.

20 Anyone else who wishes to comment?

21 MS. ALEXANDER: Good morning. My name is Kim
22 Alexander, and last year I came before this Committee on behalf
23 of California Common Cause to express our concerns about the
24 constitutionality of appointments to the UC Board of Regents.

25 Today I am here representing myself as a California
26 taxpayer who, like many others, cares very deeply about the
27 direction and the future of the UC.

28 I urge you to confirm Ward Connerly's appointment to

1 the UC Board of Regents. I know the UC Student Association
2 representatives would like to be here, too, to speak in support
3 of his appointment but are prohibited from doing so under
4 California Supreme Court rulings.

5 I was initially skeptical about Mr. Connerly's
6 appointment to the Board. I found it hard to believe that he
7 would be any different from other Regents who have contributed
8 large sums of money to their appointers.

9 Throughout the past year, I was delighted and
10 surprised to learn of Mr. Connerly's efforts on the Board. I'm
11 also pleased that, for the first time in history, the Regents
12 Advisory Commission convened, as is constitutionally mandated.

13 I support Mr. Connerly's appointment because he
14 brings a fresh voice and a critical eye to the Board of Regents.
15 He is a Regent who makes decisions with students' interests
16 first in mind. He has demanded fiscal accountability for the UC
17 and has questioned the Board's decision to raise student fees in
18 lieu of long-term economic planning.

19 Mr. Connerly has also criticized Board decisions made
20 behind closed doors and out of the public eye. His sense of
21 public accountability is desperately needed on the Board of
22 Regents.

23 He is unique in that he is an active Regent who
24 doesn't merely add this distinguished title to his resume and
25 attend meetings. Mr. Connerly serves on the Board as a genuine
26 public servant who wants to contribute his talents and energy to
27 our state.

28 I strongly urge this Committee to support

1 confirmation of Mr. Connerly.

2 CHAIRMAN LOCKYER: Thank you very much.

3 Any other comments?

4 What's the pleasure of the Committee?

5 SENATOR PETRIS: Move confirmation.

6 CHAIRMAN LOCKYER: We have a motion by Senator Petris
7 to confirm the confirmation or recommend such to the Floor.

8 Call the roll, please.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Beverly Aye. Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye. Senator Craven.

16 Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Four to zero.

19 CHAIRMAN LOCKYER: Thank you, and we expect 11 good
20 years out of you.

21 MR. CONNERLY: Thank you, Senator. I hope so, too.

22 CHAIRMAN LOCKYER: Our next confirmation question has
23 to do with Dr. Lee.

24 If you'd join us, sir. You may also wish to make any
25 opening statement at all that would help us get to know you a
26 little.

27 DR. LEE: I think probably that would be in order,
28 Mr. Chairman, because I guess I look even more different than

1 the person before me.

2 [Laughter.]

3 DR. LEE: I think it probably would be a good idea if
4 I give everyone a little summary about my personal background so
5 that you can better understand where I come from, and what I
6 stand on some of the issues and so forth.

7 First, you know, I'm extremely interested in the
8 educational system. I came to this country as a student in
9 1950, attending the University of Illinois, and I obtained my
10 degrees down there in engineering. And I went to MIT for
11 another year, which, to my surprise, you know, the cost is a lot
12 higher than I could afford. So, I took another way out by
13 taking a page out out of the traditional American spirit, that I
14 come over to the West Coast, working for a company who are
15 willing to support me going through my Ph.D. program at
16 Stanford, which I obtained it on a part-time basis with that
17 kind of financial aid.

18 So basically, I'm personally very familiar with the
19 difficulty of going to school and spending about ten years
20 through my whole college activities.

21 And over the years, I have also four children that
22 have been beneficiaries of the University of California and the
23 California higher education system. I have two daughters went
24 through Berkeley, and the one from UCLA, and the one son from
25 San Jose State College. So, many of my kids has been associated
26 with the University, which gave me a very good way of getting to
27 know the University and some of the things that's currently
28 happening.

This is just my personal background.

1 Professionally, I have also been very active, along
2 with my wife, in a lot of community activities. The gentleman
3 before me testified that it's important to participate and be
4 active, and this definitely needed in some of the people of my
5 ethnic background. And we have been trying to get them more
6 interested, not only in participating in civic affairs, but more
7 importantly, in trying to put more emphasis in education.

8 So, many of the organizations that you see that I am
9 associated on my resume has been providing scholarships,
10 financial aid, and all this type of thing to the University, and
11 to encourage the kids to go to the University.

12 And from the business point of view, I started off as
13 a regular engineer and worked my way up, as any other people in
14 the Silicon Valley. Caught the entrepreneur, you know, fever,
15 and started my own company. It has been fairly successful as a
16 small-size manufacturer in high tech products.

17 Being in the highly competitive situation in the
18 Silicon Valley area, we have to constantly react and adjust, and
19 do a lot of business-type of decisions which form the backbone
20 of my background.

21 On the other hand, I do have a lot more connection
22 with respect to how to -- looking to the higher educational
23 value, or the technology achievements of the University, and
24 being able to support some of the programs in text transfer, in
25 the management of the organization, and this type of thing that
26 is needed to keep the University of its toes.

27 To cut a long story short, some of the things that
28 you will be interested in knowing is the fact that how do I

1 stand, and why should I be on the Board.

2 I think I can bring to the Board the different
3 perspective of an immigrant, of someone that struggled to get
4 education myself, and someone that are concerned about the next
5 generation, because we, in this particular the Asian community,
6 obviously has a lot more interest and belief in higher
7 education. We like to keep the higher education as the
8 motivation and the driving force of, not only our economy, but
9 also the future of California.

10 Over the past 11 years [sic], I had the privilege of
11 serving on the Board and observed a lot, and learned a lot.
12 Some of the questions that asked previously was very, very dear
13 in my heart. And I have to admit that I wasn't as vocal as the
14 gentleman before me, but on the other hand, I can assure you
15 that we all worked hard to make sure that the University is
16 turning around.

17 One of the key reasons, I think it's brought up on
18 the testimony, is that it has been very different type of
19 operation in the past. And we're coming in a situation where we
20 have to do a lot more work to turn the thing around or operating
21 in a much more different fashion than it has been done before.

22 I do not agree on the huge amount of salaries that
23 are given to the administrators, but unfortunately, some of them
24 were in the cases of a situation that has carried over from the
25 passed on situation.

26 And I really do not believe in making hasty decisions
27 such that it would affect the morale of the overall
28 administration, because this is a \$10 billion operation which we

1 cannot turn it around very, very quickly. On the other hand, I
2 would like to work, which I have been in the past, with the
3 administrators first, and my colleagues second, to make sure
4 that we can turn them around without causing a lot of
5 disturbance in the operation of the University, which I consider
6 as very important to keep the integrity up.

7 We had three -- we had four -- we had three early
8 retirement plans done already, and we had four student fee
9 increases as major steps. Each of them has been extremely
10 excessive, has been affecting the operation of the University.
11 And we're constantly looking at other ways of accomplishing the
12 budget shortfalls so that we can keep the University at its
13 premium state.

14 In that respect, I have worked with the
15 administrators and also worked with the other fellow Regents, to
16 make sure that we want to turn this thing around.

17 Like the gentleman before me, we will do our job, and
18 we'll try to do it as rapidly as we can, but with the least
19 amount of damage to the operation of the University.

20 With that in mind, I'd like to offer to the Senators
21 any questions that you may want to ask.

22 CHAIRMAN LOCKYER: Thank you, sir.

23 Questions? Senator Petris.

24 SENATOR PETRIS: It's a very impressive background.
25 It makes it difficult for me to understand why you would support
26 a fee increase, since you struggled as a student and faced those
27 problems that you indicated.

28 DR. LEE: Senator, I think there's two records that I

1 have to clear.

2 I voted against the salary increase on some of the
3 hospital staff people prior to the next vote that you are
4 talking about, as far as the fee increase is concerned.

5 That particular part was a situation where it's a
6 total package of a differential fee increases as well as, you
7 know, the \$620 fee increase proposed by the administration. And
8 the problem as I see on the University budget is the fact that
9 we have not been very aggressively pursuing the point that
10 Senator Petris just brought up, is the fact how can we get more
11 revenue into the system so that we do not have to take the last
12 moment type of situations, where the administration or the
13 operation of the University used the fee increase as a last
14 resort or a short-term solution, which turned out to be a
15 long-term problem at this particular point.

16 I personally do not like the idea of a fee increase.
17 My voting for it was not my agreement to the fee increase, but
18 as a compromise to that fee increase.

19 We have made it very, very clear to the
20 administrators, as well as a number of Regents has expressed the
21 same opinion, that we would be trying to stop this type of
22 stop-gap measures because we have done it already too much.

23 SENATOR PETRIS: In your meetings, have you talked
24 about persuading the Governor to support a tax increase as one
25 of the sources?

26 DR. LEE: We have been doing certain amount of that
27 type of work in the past. Obviously, we have to see the
28 packages, you know, as to how it's presented and what the

1 structure is going to be. And if there's something to go for
2 the University, either by tax or any other source of revenues,
3 I, as an individual, would be 100 percent supporting it.

4 And I appreciated the help from the Senators to bring
5 us, you know, that type of solutions or help so that we can keep
6 the thing going.

7 That doesn't necessarily mean that the University
8 should sit on its current situation and not trying to do
9 something to improve itself, or stop the escalating salary
10 increases that has been going around.

11 SENATOR PETRIS: I think it'd be helpful to the
12 Governor if all the Regents said, "We'd like to see you do this,
13 and we'll support it," considering the fact that the Regents
14 come from many different kinds of business backgrounds and have
15 extensive contacts in the business community. It might help
16 turn it around from that side, too. Not as the only solution,
17 but as part of it. I would urge you to consider that.

18 DR. LEE: I would. And I like your idea of not the
19 only solution, but one of the possible avenues.

20 SENATOR PETRIS: Thank you.

21 CHAIRMAN LOCKYER: Dr. Lee, I wish you would comment
22 a little more on your thoughts about the process of turning the
23 University around, and the direction you would hope to take it.

24 If you were the captain of the ship, or one of the
25 co-captains, because you are, where are we sailing to? What do
26 you want it to look like if it's different as a result of your
27 efforts?

28 DR. LEE: That's very good question, Senator, because

1 in the last 11 months, obviously, we have been deluged with all
2 the short-term problems that we've been facing, and not having
3 the opportunity to really look at the long-term and the overall
4 vision of the University.

5 And the University is the driving force of our state
6 economy and also the working people, that we train them, we
7 provided them, and we certainly want it to continue to provide
8 the kind of quality of level of education in this particular
9 institution.

10 And to answer your question about how we can move
11 forward, first thing, we have to stop the bleeding, or the
12 difficulties that we're currently facing. And some of the
13 things that we have not been doing well in the past, we have to
14 turn them around first.

15 One of the problem we are facing here is the fact
16 that the last ten years has been in a growth mode. I mean, that
17 this is not different in the business point. When you're in the
18 growth mode, that you operate certain things slightly
19 differently than when you are in a more constrained mode. And
20 this mode change is the first issue that we needed to face and
21 have the University turned around.

22 We are beginning to do that, Senator, because as you
23 know, the new President was on board only one and a half year
24 ago, and his two Senior Vice Presidents was only hired about a
25 year ago. And so, we have a new administration, but we have an
26 old momentum, you know, whether it's in the school, or it's in
27 the staff, or in the faculty. We've been turning the around and
28 trying to see some of the things that is currently going.

1 For instance, our faculty salary used to be way ahead
2 of everybody. Now it's falling behind. And we are taking
3 measures to make sure that the new hired people are not being
4 given the kind of salary that were given to the previous guy
5 that he's replacing. I think we have been doing that.

6 And I would strongly encourage the people to serve
7 the University on a more dedicated basis rather than based on
8 the financial incentives.

9 And as a businessman, I would convey to the
10 administration that we may have to take some gamble in turning
11 that thing around to the point where we may lose some people,
12 but we'll attract even better qualified and more dedicated
13 people to serve on the University.

14 I don't know whether I covered all the questions.

15 CHAIRMAN LOCKYER: Mostly all we can do is try to get
16 a sense of who you are and what you stand for, because all these
17 issues could be discussed for another year.

18 DR. LEE: That's correct.

19 CHAIRMAN LOCKYER: Could you reflect, you mentioned
20 the faculty salary situation. The relative rates of increase of
21 administrators to faculty in UC has been about twice on the
22 administrative side to the faculty side over the last decade.

23 Now, you obviously weren't there all that time, and
24 it's hard to hold you accountable personally, other than that
25 there is that trend, and that you did vote for a faculty pay
26 cut, which exacerbates that trend, plus administrative
27 increases.

28 Talk about that a little, I think.

1 DR. LEE: Surely.

2 The faculty salary level at this stage of the game as
3 compared with the other institutions, or the general trend, were
4 a little bit behind. We were way ahead, you know, before.

5 And as far as the salary on some of the
6 administrators goes, it's way out of line in my personal
7 opinion. And the reason I'm saying it is the fact that the
8 people should serve the University on a more dedicated basis,
9 and more challenging basis, than strictly on the financial
10 reward basis.

11 And over the last year or so, I have looking into
12 this salary situation on a more deeper basis. I have obtained
13 the listing of all the people that is making a salary, say, in
14 excess of \$100,000, and trying to look at the reasoning behind
15 each one of them, and had offered some of my judgment to the
16 administration and suggested that there may be some way to make
17 a more equitable adjustment as time goes on.

18 And I can assure the panel that the newly hired staff
19 are always coming at a level lower than what they are replacing.
20 And I think that trend is gradually happening.

21 CHAIRMAN LOCKYER: Maybe these were not teaching
22 employees that are noted in our record, but I think they are,
23 sir.

24 The point is that in March a year ago, you were among
25 those who voted a 3.5 percent salary cut for employees.

26 DR. LEE: That's correct. That 3½ percent was 5
27 percent at that moment. It's about a year ago.

28 That 5 percent actually in reality is actually a

1 deferment of salary, because that money would be put back upon
2 retirement at a later stage. So, it looks like a cash flow of 5
3 percent deferment, and we voted as a total package to balance
4 the budget along with the fee increases at that particular
5 moment.

6 That number was reduced to $3\frac{1}{2}$ percent six months
7 later, when we had a \$50 million infusion from the
8 appropriation. So, that was reduced to $3\frac{1}{2}$ percent.

9 Now, at that particular time, just for the record,
10 that I have suggested, or at least discussed with many people
11 about the fact that, you know, we could leave the 5 percent as
12 it is and totally eliminate the \$600 fee increases by the
13 student. And after careful consideration by the Academic Senate
14 and the administration, that we decided we'd put the whole thing
15 on a more even basis. That means reduce the fee increases by a
16 certain amount, and we reduce the 5 percent to $3\frac{1}{2}$ percent.

17 Now, those are all the compromises being done and it
18 made our package passable, or at least it's more acceptable at
19 that moment.

20 CHAIRMAN LOCKYER: Other questions from Senators?

21 Are there people present who would wish to comment on
22 the recommendation?

23 We're trying to figure out our procedural situation
24 here because we have one Member absent.

25 MS. MICHEL: Well, you have until Thursday.

26 The intention is, when they get out of Committee
27 today, if they get out of the Committee, take them up on the
28 Senate Floor on Monday, which gives the opportunity for them, if

1 there were a problem on Monday, to slip to Thursday. But
2 Thursday is the 365th day.

3 CHAIRMAN LOCKYER: Thank you, Dr. Lee. We've
4 appreciated your visiting with us, and, as Senator Petris had
5 indicated, your outstanding personal history.

6 You should be very proud of your accomplishments and
7 the business that you've created. And I think we all share that
8 respect for your history.

9 DR. LEE: Thank you, Mr. Chairman and Senators.

10 CHAIRMAN LOCKYER: We appreciate the chance to meet
11 with you, sir.

12 Let me just confer with Senator Beverly, if I may.

13 [Thereupon a short discussion was
14 held off the record.]

15 CHAIRMAN LOCKYER: Thank you, Doctor. I think what
16 we'll do is make sure that we have all Members present so it
17 doesn't disadvantage you in any way, because there seems to be a
18 split opinion among the four of us. And it would be to your
19 benefit to make sure that we recess the discussion, or continue
20 the discussion, on Monday.

21 We'll still make the deadlines that are confronting
22 us, but I think that would be the appropriate thing to do, and
23 that that will be to your benefit, sir.

24 DR. LEE: Thank you.

25 CHAIRMAN LOCKYER: So, we'll not vote today, but have
26 a special Rules meeting on Monday for that purpose.

27 DR. LEE: Thank you, Mr. Chairman.

28 MS. MICHEL: Prior to the Floor session? Is it your

1 intent to do something on Monday or wait until Thursday?

2 CHAIRMAN LOCKYER: I think we'll have to wait. We
3 could maybe do the one Monday, and then wait for Thursday.

4 Do you have a thought on before or after?

5 SENATOR BEVERLY: The Floor debate is Thursday?

6 CHAIRMAN LOCKYER: Yes.

7 MS. MICHEL: Right.

8 SENATOR BEVERLY: So the nominees are aware, we've
9 always joined in a request when one Member of the Rules
10 Committee asks that it be held over.

11 I think that we ought to schedule the meeting for
12 Monday.

13 CHAIRMAN LOCKYER: Yes, but the question is: before
14 or after session?

15 SENATOR BEVERLY: We have that Joint Appropriations
16 Committee meeting Monday morning.

17 CHAIRMAN LOCKYER: That's right. That's in the
18 morning.

19 Maybe we'd better do it after session, then, upon
20 adjournment.

21 [Discussion off the record.]

22 MS. MICHEL: You can always meet off the Floor.

23 SENATOR PETRIS: Maybe we could meet at 11:30 for
24 five minutes.

25 CHAIRMAN LOCKYER: That would be fine with me.

26 MS. MICHEL: Do you want Dr. Lee here?

27 CHAIRMAN LOCKYER: I think we've asked the questions,
28 unless he wishes to attend.

1 So, let's make it 11:30 Monday for the final vote.

2 SENATOR BEVERLY: For vote only?

3 CHAIRMAN LOCKYER: Unless other Members want to
4 comment, but I would be inclined to have it be for vote only. I
5 wouldn't want to cut someone off if they felt like they had some
6 burning matter. He ought to be present to respond if that does
7 happen.

8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately
11 12:17 P.M.]

12 --oo0oo--


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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

LESTER H. LEE, Ph.D., Member
Board of Regents
University of California

SENATOR ALFRED ALQUIST

WARD CONNERLY, Member
Board of Regents
University of California

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Now our final remaining item to take up today is that which was put over from last Thursday so that we'd have a full panel today and a little more time to reflect, and that is the Governor's appointment of Dr. Lee to the Regents of the University of California.

Senator Alquist, did you wish to make a comment, sir?

SENATOR ALQUIST: Last Thursday, I was here to introduce and recommend to you Mr. Lester Lee for confirmation, and I still feel that way.

But after I left the hearing, I found a copy of a letter from the American Federation of Teachers, which had apparently been delivered just the day before. This is certainly highly unusual for institutional lobbyists for an institution that's here all the time to delay their opposition to an appointment, or to legislation, for that matter. And I thought that there were several things in that letter that needed to be cleared up.

The reason for opposing Mr. Lee was, he voted for 3½ percent salary cut for UC employees, and he also voted to increase student fees an additional \$640 for the '93-94 academic year, and he still supports raising fees.

I would point out to you that the University operates on the budget that this Legislature makes available to it. And of course, we were hampered by some of the decisions by the voters and some of the initiatives that have been passed and by the ongoing recession that we face.

1 If we're going to maintain the University as a world
2 class institution, some of these most difficult decisions will
3 have to made. And I would point out to you that even with the
4 increase in fees, these fees are still below any other state run
5 university in the United States.

6 These are most difficult choices to make. I think
7 that Mr. Lee has demonstrated his courage and understanding in
8 his desire to keep California as the world class institution
9 that it has been over the years, one of which we can be proud,
10 and that to deny confirmation to Mr. Lee would be a serious
11 mistake.

12 I would also point out to you that he is the first
13 person of Chinese ancestry to be named to the Board of Regents.
14 Some 25 percent of the student body is now Asian, and I think
15 that a failure to confirm Regent Lee would send a very
16 unsatisfactory message to the Chinese community in the State of
17 California.

18 So, I would urge you to give serious thought to this
19 confirmation.

20 CHAIRMAN LOCKYER: Thank you very much, Senator.

21 Dr. Lee, I know you'd prepared a letter for us, which
22 we've all received, but did you wish to add any additional
23 comments at this time?

24 DR. LEE: If I may.

25 CHAIRMAN LOCKYER: You certainly may. Please join
26 us.

27 DR. LEE: First, I would like to -- Mr. Chair and
28 Senators, first I would like to thank the Committee for allowing

1 me to have a chance to come over here to clarify some of the
2 points of your concerns.

3 We have been operating in a very difficult period of
4 time ever since I joined the University Board of Regents last
5 year. And some of the actions that we're doing, as eloquently
6 presented by Senator Alquist, was part of the things that led to
7 some of the actions that I have taken.

8 On the other hand, I do feel obligated to present to
9 you where I have been doing this type of thing in terms of being
10 able to take the actions on my own hand with respect to this
11 budget issue that we have been talking about.

12 The student fee increase, as I explained the last
13 time, was part of a total package, that we were looking at it as
14 a total budget plan. You gentlemen certainly have dealt with
15 budget problems before, and I don't need to explain how
16 difficult and how hard it is to understand the total package
17 that we needed to keep the institution as the world class
18 university here in California.

19 And my first love and the first dedication is to the
20 students and the people of California, and I have to vote on my
21 conscience as to what's the best at that particular moment for
22 what are we trying to do. In terms of that particular part,
23 what we're trying to do is to preserve the University at the
24 level of instruction, and the quality of instruction, that we
25 can provide to ours students, so that the access to the people
26 is not more important than trying to make some budget cuts, such
27 that we would deteriorate the University to the point where the
28 restoration of the operation would be a lot more costly and

1 unfair to the people in California.

2 And this position was examined, and I finally voted
3 for the total package based on my conviction that as long as the
4 people who has the least amount of ability to attend a
5 university are helped, this would be something that we can do,
6 you know, for the people, for the students that come to the
7 University of California. And in that respect, we were assured,
8 or at least I'm convinced, that the procedure of putting through
9 one-third of the total revenue back to the financial aid package
10 would be a tremendous help to reduce the pain, as we say, and
11 only with that occurrence did I agree to vote for the package.
12 And that was one of the kind of very difficult and very
13 troublesome positions that I have taken.

14 As to my ability to operate on an independent basis
15 and not having the University to fall into the same trap as it
16 has been over the past on some of the issues, I have studied
17 them very, very carefully, and I explained at the last meeting
18 that we are taking a new direction for the University, with the
19 new administrators, including the President, the two Vice
20 Presidents, the two Senior Vice Presidents, that are new on
21 board, and we try to work with them so that we can get them to
22 operate on a direction that is not in the same line as we had in
23 the past.

24 And in that respect, we discussed quite closely,
25 because they were hired by the Regents, and they are accounted
26 for by the Regents, that we discussed a lot of issues before we
27 put them on to the floor. And in that respect, we have done a
28 lot of negotiations, suggestions, or compromises, behind the

1 doors, which I personally participate quite considerably. And
2 one of the typical issues that I can use as an example for my
3 own record is essentially on this hospital executive pay
4 increase, which was suggested by the University at a certain
5 rate, and was not favored by the Regents before it was brought
6 to the floor. And when it did go to the floor, it was not to my
7 personal satisfaction, even though most of the regents agreed to
8 it.

9 So, I ended up being one of the five Regents that
10 voted no on this particular issue. Now, that did not stop the
11 issue being passed, except I did have this particular record to
12 show to the Committee that I have acted on my own conscience and
13 on my own belief, and certainly the message has been carried
14 through to the other Regents as well as the University.

15 In terms of the style or presentation, I tend to work
16 first with the staff or the administration first in trying to
17 make sure that everything we can do, we exercise our utmost
18 influence. And by making them aware of the position where the
19 Regents wanted to be, we will be able to move the whole thing in
20 the right direction. And by doing that, I have more actions
21 behind the door than I have the actions on the floor, which
22 unfortunately does not give me a good image in the public eye.

23 But I can assure you that my dedication to the
24 University is certainly above board. I told you before that I
25 got through my college education for 12 agonizing years that I
26 have to worry about how to support myself and my family. So,
27 I'm very sensitive to the students' needs as well as the
28 University budget problem.

1 And what I will try to do is to make the University
2 turn around so that we can take various directions to propose
3 new ways to solve the problem, including a lot of the things
4 which they have discussed before or things that we have taken to
5 the floor.

6 And your giving me a chance to serve on the Board
7 would certainly bring a total different type of approach to the
8 ways that the school has been operating before, and also has
9 been judged to account. I would try to operate on the basis of
10 what I can do the best for the University, and the best
11 representation for the people of the State of California, and
12 not necessarily based on my own ethnic background or anything,
13 but essentially a better understanding about where we can do for
14 the University.

15 And at this particular time, I'd like to have
16 somebody who might have some better input as to how I performed
17 as the Regents meetings, or at the University, and none other
18 than my colleague and my teammate, Regent Connerly was kind
19 enough to offer his help in this particular testimony, that I
20 would appreciate it if the Chairman would allow some
21 presentation.

22 CHAIRMAN LOCKYER: Mr. Connerly, did you want to add
23 something?

24 MR. CONNERLY: Mr. Chairman, Members of the
25 Committee, first of all, I want to thank you for your vote of
26 confidence in me last Thursday. And you especially,
27 Mr. Chairman. You were very fair. There were some questions
28 that I thought you asked with utmost delicacy, and I'm grateful

1 to you for that.

2 I would not be here on behalf of Lester Lee if I
3 thought he was just another good old boy. The University is
4 going through some very troubling changes. Since last November,
5 and my letter to my colleagues, which said our culture here is
6 not right, and we need to make some changes, we've been dividing
7 up and choosing sides. Lester Lee is an ally.

8 He is not as vocal, and there's something, I think,
9 we candidly need to say. It has nothing to do, I think, with
10 his ethnicity, but the fact of the matter is that, although he
11 is fluent, he is not comfortable, he is not secure, in this
12 environment. We talk about the intimidation of being on the
13 Board of Regents; this forum is also an intimidating one, and he
14 stumbles to some extent in trying to express to you his views.

15 That is a situation that many immigrants who are just
16 getting into the mainstream have. It's a fact of life, and I
17 think we kind of need to understand that.

18 I don't think this is about his vote on fees. I hope
19 that you're not going to reject him, or make your decision on
20 the basis of individual votes, because as long as he is doing
21 his duty and exercising due diligence, we're going to disagree.
22 He has voted against me more than he's voted with me, and I have
23 talked to him about that.

24 It takes time for a Regent to feel secure in coming
25 forward and standing out when you know that everybody there is
26 against you. And if you're a rookie Regent, it takes a little
27 bit of courage to be able to step forward.

28 Lester, I think, began to make the transition about

1 November. He came to me and said, "You're absolutely right.
2 You're right with your observations."

3 But I don't think that he had mustered the courage
4 until like November or December to find out that he was not
5 alone in his observations.

6 So, I would say to you, Mr. Chairman, he's an ally.
7 He's an ally. He is one that wants to move the University in a
8 different direction.

9 But please understand, if you will, the language
10 problem. It is a serious problem.

11 CHAIRMAN LOCKYER: Well, I've thought about that, and
12 have factored it into any decisions that I might make, I hope in
13 a fair way. And also understanding that different individuals
14 have different approaches to how much confrontation they're will
15 to involve themselves in.

16 So, I hope I've been fair in understanding his
17 background and experiences, and how they might make for a little
18 more difficult presentation than, perhaps, you might have,
19 Mr. Connerly, here.

20 I wish, frankly, we had more time. This is one of
21 the things where it may be more intuition than evidence. And
22 it's really hard when you look -- you know, when you vote for or
23 against a bill, it's sort of theoretical, and slogans on both
24 sides. But when you look at a human being that you have to vote
25 yes or no, it's different and it's harder.

26 And I have a good deal of respect for the
27 difficulties the Rules Committee has had over the years with
28 these kinds of decisions.

1 these kinds of decisions.

2 Thank you.

3 MR. CONNERLY: I would say, please understand that he
4 has been a very thorough Regent. And while I disagree with him
5 on 90 percent of his votes, they were votes of conscience, and I
6 understood that.

7 CHAIRMAN LOCKYER: One of our most thorough Members
8 is also an engineer, Senator Leroy Greene. So, I think we're
9 familiar with that characteristic, too.

10 He's clearly very thorough and works hard.

11 MR. CONNERLY: He's a good man, though, and he will
12 be a good Regent.

13 CHAIRMAN LOCKYER: Thank you, sir.

14 MR. CONNERLY: Thank you.

15 CHAIRMAN LOCKYER: Senator Maddy or anyone else
16 present that wishes to make any comment?

17 Members? Senator Ayala.

18 SENATOR AYALA: Mr. Chairman, I'd like to state my
19 position as it pertains to this appointment.

20 About a year ago, I had my office in the district
21 picketed by students from Cal Poly campus and the State
22 University at San Bernardino because of the increase of tuition
23 fees and fees by itself.

24 And I indicated to them that the only thing I could
25 do was not to support anyone who would favor increasing tuition
26 fees that are unreasonable.

27 At the same time that the Regents increased the fees,
28 they also increased the administrative salaries. You see, it

1 students, well, you know, one-third of that fee goes back to
2 support students from low-income families.

3 So, how can I go back to the students and say I lied
4 to you? I'm going to support someone who voted to increase
5 student fees, for whatever reason, when I committed myself to
6 them that I would not support any one of the Regents that would
7 increase the fees of students out of reason?

8 If they would have increased the fees of students, at
9 the time hold the line on the administrative salaries, it would
10 make sense. But when they do both, it looks like they're trying
11 to support administrative salaries through increase of fees, and
12 the perception is that they're not doing the students any --
13 they're withholding access to the University by doing that to
14 the students.

15 I have a problem with anyone who voted to increase
16 fees, not necessarily Dr. Lee, but any Regent, and also at the
17 same time, increase the salaries of the administration. I just
18 can't justify that, and I can't go to the students when I said I
19 would do otherwise.

20 So, that's where I'm coming from.

21 CHAIRMAN LOCKYER: Senator Craven.

22 SENATOR CRAVEN: Just to follow.

23 I thought that I understood what you said. However,
24 I have a feeling that there's some lack of logic or whatever.

25 He did not vote to increase the salaries.

26 SENATOR AYALA: That's of the hospital, but not the
27 rest of the administrators.

28 SENATOR CRAVEN: Well, he voted, as you said, to

1 SENATOR CRAVEN: Well, he voted, as you said, to
2 raise fees. And I think that he or any student in our
3 educational system with any modicum of intelligence would
4 understand why he did that, because it makes good sense. It
5 makes sense to you, what you think and so forth, it makes sense
6 to me. But that's really not the point.

7 My feeling is, you make -- if you choose to make a
8 statement that, "I'm not going to ever do this any more, ever,
9 ever again," that's your business. I think it's stupid to do
10 that, Rube, and I can say that to you because I've been around
11 you for many, many years, and I never hold back, nor do you.

12 But I just don't think that to say that, and then
13 been fearful of these students, you know, God help us, you're
14 going to be looking over your shoulder all the time.

15 SENATOR AYALA: Bill, I'm not fearful of anybody,
16 including the Regents.

17 I said that raising fees unreasonably. I didn't say
18 ever, ever not to raise fees. We're going to have to. The cost
19 of education keeps going up, you know. The students have to
20 carry the load.

21 SENATOR CRAVEN: Yes.

22 SENATOR AYALA: But at the same time you're
23 increasing the fees, you increase the salaries of administrators
24 -- I know that he didn't vote to increase salaries of the
25 hospital administrators -- it doesn't make sense to me. It
26 makes sense to you, maybe, but not to me.

27 SENATOR CRAVEN: No, it doesn't make any sense to me,
28 either.

1 But what doesn't make sense to me is to tar him with
2 a brush that, perhaps, belongs on somebody else's hide.

3 He didn't do what these people didn't want him to do
4 as it related to the raise in salaries.

5 You know, there's something else, Mr. Chairman, if I
6 may. Do I have the floor?

7 CHAIRMAN LOCKYER: Yes, the Marines have taken the
8 beach.

9 SENATOR CRAVEN: And as usual, we're fighting amongst
10 ourselves.

11 [Laughter.]

12 SENATOR CRAVEN: Well, I can say those things to Rube
13 because he's a very dear, old friend of mine, and he understands
14 that I have feelings just as he does.

15 I also have a memory, too, and I have a memory of
16 when we were down in the other room where we generally meet, and
17 I think it was an appointment to a commission, I think. I don't
18 know which it was, but it was not as consequential, all things
19 being equal, as this one is. And I can remember a gentleman who
20 was obviously Chinese. He was no youngster.

21 He came up, and the Chairman said to him at the time,
22 "Why are you opposed to Mr. Jones?"

23 And he said, in very, very broken English, "We not
24 opposed to Mr. Jones. We want to know when Chinese get chance."
25 That's exactly what he said; that's the way he said it.

26 I had to feel within me, I really feel for this man.

27 The gentleman who was up here testifying, he said
28 about the old boys. Well, this was something that we picked up

1 a lot of old boys, which I have personally been against for a
2 long, long time. And I felt sorry for this man, and I thought,
3 "This poor soul. He's got a point. When are we going to
4 recognize it?"

5 Now we come up with a man who, perhaps, as the other
6 gentleman said, although I didn't really feel that way about
7 him, he may have trouble with an articulation, but he has
8 something that is pulsating within him, and that's a heart. And
9 he says exactly what he feels. And he's a man that's come up
10 the hard way, not from the top; he came up from the absolute
11 bottom to become a Ph.D. And he happens to have,
12 coincidentally, a heritage which makes him a little different
13 from the rest of us. Something that we need; something that
14 we've talked about.

15 We talk about Pacific Rim, how about those people who
16 come from that area or who do business with them, where we can
17 use their talents and give them the opportunity to express
18 themselves, themselves, as well as others who may have been of
19 the same ethnic group.

20 I have never talked to this man. I have never seen
21 him before today. But I read this letter that he produced, and
22 he pretty much articulated those things when he came up to
23 testify, and they make sense to me.

24 I don't know; I haven't heard from the American
25 Federation of Teachers. I haven't been in touch with AFT for, I
26 don't know, a decade, I suppose. I am obviously not their "Man
27 of the Year."

28 But I just would appreciate it if somebody had come

1 by and said, "Bill, this is what we feel," to give me a chance
2 to have some dialogue with them. because if it's only a kind of
3 an aura that surrounds this thing, and that's my feeling, then
4 recognize that that's no reason whatsoever to turn this man
5 down.

6 And I would implore you, Mr. Chairman and my
7 colleagues, to give thought to this. Let's try to put the right
8 man in the right job.

9 CHAIRMAN LOCKYER: Thank you, Senator.

10 I guess I'll just say this.

11 First of all, it's a very close call for me. But I'm
12 mindful of the fact that the University routinely tells us how
13 immune they are from our legislative and budgetary efforts.
14 That because of their unique constitutional status, that we
15 can't affect or influence their affairs to the extent we might
16 other state agencies.

17 So, with that in mind, plus the fact that the
18 consequences of today's vote would stretch to the year 2005, I'd
19 like to, I guess, err on the side of caution.

20 And I hope I'm not being unfair to Mr. Lee, because
21 I've been very impressed with his history, his presentation, his
22 statements.

23 I wish there were more evidence, rather than largely
24 intuition. The evidence isn't very satisfactory. It's sketchy,
25 but the continuing increases in administrative salaries relative
26 to faculty and others, at about twice the rate, the student
27 fees, open meeting issues, I think the point has been made, and
28 correctly, and the Regents need to embrace the diversity of the

1 state more than has happened.

2 I was quite excited about the fact that a Chinese-
3 American would have the first opportunity to serve on the Board,
4 or has had that opportunity.

5 But my own sense of things is, we need diversity of
6 opinion and philosophy as much as diversity of racial
7 characteristics. And that the University needs a cultural
8 change. I think Regent Connerly has spoken to that. And partly
9 I felt comforted by the vote to confirm his nomination, because
10 I thought there was a greater sensitivity to that need, to
11 change this great institution to make it greater.

12 And I didn't find the disposition to be a change
13 agent with Dr. Lee. I found a very fine gentleman with business
14 skills and knowledge, and perhaps, at a different time or a
15 different era in our history, an appointment that would be
16 absolutely appropriate.

17 I just hope that it will be explained or understood
18 in this general context that there's too much deference to high
19 level bureaucrats in the UC system. That the Board defers too
20 much to the bureaucracy. And that's the fundamental conviction
21 that I bring to the vote.

22 And the reason I cast a no vote is that I think we
23 need to tell the Governor and the University that changes are
24 needed, and not just tax increases for students, which has been
25 their easy way of not confronting their management and budget
26 problems.

27 I hope, and I certainly will commit myself to
28 involving the Chinese-American community, and other Asian

1 community leaders, in competing for a vacancy, if there is one,
2 because I do agree with you, Senator Craven, that that diversity
3 is important and should be nurtured with the Board of Regents.

4 Not an easy vote; close call. A lot of them here
5 seem to be 52-48 kinds of judgments, but at least for me, the
6 uncertainties and the lengthy tenure contribute to the no side
7 of the ledger.

8 What's the pleasure of the committee?

9 SENATOR CRAVEN: I will move.

10 CHAIRMAN LOCKYER: We have a motion for confirmation.
11 Call the roll, please.

12 SECRETARY WEBB: Senator Ayala.

13 SENATOR AYALA: No.

14 SECRETARY WEBB: Ayala No. Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Beverly Aye. Senator Petris.

17 SENATOR PETRIS: No.

18 SECRETARY WEBB: Petris no. Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Craven Aye. Senator Lockyer.

21 CHAIRMAN LOCKYER: No.

22 SECRETARY WEBB: Fails two to three.

23 SENATOR BEVERLY: Mr. Chairman, would a motion be in
24 order to move that the matter be sent to the Floor without
25 recommendation?

26 CHAIRMAN LOCKYER: I guess that's a motion that is in
27 order.

28 SENATOR BEVERLY: So move.

1 CHAIRMAN LOCKYER: Does anyone wish to discuss it?
2 Senator Petris.

3 SENATOR PETRIS: I have a problem with that. It has
4 the effect of nullifying the vote, and it would prevail over
5 our vote that we just made.

6 I don't see how we can send both down. One says we
7 recommend no confirmation, which usually ends here.

8 SENATOR BEVERLY: It does end here. It doesn't go to
9 the Floor. The motion that just failed is nothing would go to
10 the Floor.

11 I'm suggesting we put the issue before the body,
12 because it was a close call, to use the words of the Chairman.

13 CHAIRMAN LOCKYER: My reaction is that I agree with
14 Senator Petris, that we should be able to make whatever decision
15 we need to make and live with the result. For that reason, I
16 vote no.

17 Further discussion? Call the roll on Senator
18 Beverly's motion.

19 SECRETARY WEBB: Senator Ayala.

20 SENATOR AYALA: No.

21 SECRETARY WEBB: Ayala No. Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye. Senator Petris.

24 SENATOR PETRIS: No.

25 SECRETARY WEBB: Petris no. Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Craven Aye. Senator Lockyer.

28 CHAIRMAN LOCKYER: No.

1 SECRETARY WEBB: Fails two to three.

2 CHAIRMAN LOCKYER: All right, I think we've concluded
3 our business for today.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 12:29 P.M.]

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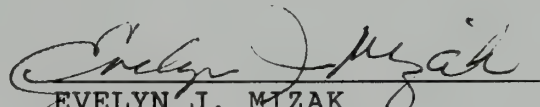
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of February, 1994.


EVELYN J. MIZAK
Shorthand Reporter

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28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN W. BROWN, Member
State Water Resources Control Board

GORDON COLOGNE

MIKE DILLON, Executive Director
California Association of Sanitation Agencies

JEAN SAGOUSPE, President
Central Valley Project Association

ED SCHNABEL, General Manager
Sacramento Metropolitan Water Authority

ROBERT H. TOURTELOT, Member
California Horse Racing Board

MARIANNE CHASE
Thoroughbred Owner and Breeder

ED FRIENDLY
Thoroughbred Owners of California

DOUGLAS McGEOGHEGAN, Member
Fish and Game Commission

APPEARANCES (Continued)

SHEL MEYER, President
NorCal Fishing Guides and Sportsmen Association
Chairman, Central Valley Fisheries Coalition
Pacific Coast Federation of Fishermen
Golden Gate Fishermen's Association

MARK J. PALMER, Executive Director
Mountain Lion Foundation

VIRGINIA HANDLEY
The Fund for Animals

HANS HEMANN
Sierra Club

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Our next item is Mr. John Brown, State Water Resources.

If you would come forward, sir. Good afternoon.

MR. BROWN: Mr. Chairman.

CHAIRMAN LOCKYER: Well, Mr. Brown, why don't you tell us about you, and it looks like you have a prepared comment that you might want to start with, so tell us about yourself in this position.

MR. BROWN: Thank you, Mr. Chairman and honorable Members of this Committee.

My name is John W. Brown. I was appointed by the Governor on June 8th to serve as a member of the State Water Resources Control Board. I started that position July 15th.

I serve the position of civil engineer with experience in water resources, water rights, and in agriculture.

My background, I have 40 years of living in California. I went to high school and junior college in the San Joaquin Valley, a town called Visalia near Fresno. I went to Los Angeles State College on an engineering scholarship and a football scholarship.

I worked at Peerless Pump in Southern California, and Soult's Pump Company in Tulare in the central San Joaquin Valley, the Irvine Company, and then I spent 15 years as a consulting engineer before accepting this position.

During my tenure at Peerless Pump in Southern California, I was a junior design engineer when I first got out

1 of college and worked my way up as the chief of design of
2 horizontal chemical process pumps.

3 My wife and I and two daughters at that time moved
4 back to the San Joaquin Valley, to Visalia and Tulare, and I
5 worked for Soult's Pump Company for two years and developed a
6 vast understanding of sprinkler irrigation systems, and
7 developed and patented a machine to put sulfur into solution.
8 And that material is used as a herbicide and a fungicide and to
9 help neutralize alkaline soils for agricultural production.

10 From there, I moved back to Southern California, the
11 Irvine Company or the Irvine Ranch, and spent the next 14 years
12 of my profession. When I moved to Orange County, there was
13 about 80,000 acres total of Irvine in Orange County; 20,000
14 acres was under irrigation, and they also had 13,000 acres under
15 irrigation in the Imperial Valley. In addition, they had a
16 large ranch in Montana which responsibilities would sometimes
17 take me to.

18 During the tenure with the Irvine Company, I was
19 responsible for their engineering operations, their water
20 supply, drainage, flood control, construction, and maintenance.
21 We had seven earth-filled dams, 32 deep well turbine pumps, and
22 we delivered about 30,000 acre feet of water a year to irrigate
23 the 20,000 acres of land. We installed some of the first drip
24 irrigation for -- within the State of California back in the
25 mid-1960s to irrigate citrus and such.

26 We also developed a reclamation and re-use program in
27 the early days where we treated municipal and industrial waste
28 water and conveyed it inland after advanced treatment for the

1 irrigation of crops, and parks, and green belts, and
2 landscaping.

3 I was able to convince the Irvine Company in later
4 years that, since they were developing into a residential
5 commercial area, and my interest was mainly in water resources,
6 that the time was fast approaching which we could more cost
7 effectively contract out the engineering services than we could
8 by staffing for it. And if I could take my staff and go with a
9 well established civil engineering firm in the area, that we
10 could contract back and do the work on a contract basis as
11 opposed to staffing for it.

12 After about two years of discussing this with Irvine,
13 they agreed to let me do that. So, I took the engineering staff
14 from Irvine, and we moved over to Boyle Engineering, in the same
15 area, and opened up a new division for Boyle. We contracted
16 back the first year and did the work on a contract basis as
17 before, and we saved the Irvine Company about \$40,000-50,000 the
18 first year. But more importantly, it enabled my staff and I to
19 be in an area of growth, and one of the first assignments we
20 took the first year was the master planning, the development, of
21 12,000 acres of citrus in Egypt near the Espaya Canal, with all
22 the infrastructure associated with it.

23 While working with the Boyle Engineering for the next
24 almost 14 years, one of the major things that we did was to
25 inventory the reclamation programs within the State of
26 California, the advantages and disadvantages, and it was done
27 for the State Water Resources Control Board at that time, as a
28 matter of fact. The result was a technical report to where we

1 could take data that was being developed in the late '60s and
2 early '70s and convey it from one part of the state to the
3 other, that the treatment plant operators would have this
4 information and be able to understand what was happening in
5 other parts of the state.

6 In addition to the technical data for those, we
7 developed, maybe more importantly, a brochure for the
8 agricultural community to use treated municipal and industrial
9 waste water for irrigation purposes. And the idea was to get
10 the farming community interested in conserving and reclaiming
11 water as well as the engineer and water suppliers. And that for
12 a long time was a benchmark for reclamation within the state.

13 In 1984, my wife and I moved to Sacramento, and we
14 opened a new office for Boyle up here. We didn't have a job, or
15 a place to stay, so we started out fairly cold. But we spent
16 the last 10 years up here and have enjoyed it immensely.

17 Since moving to Sacramento, we've worked on
18 assignments for the Bureau of Reclamation here, flood control
19 projects, drainage, soil conservation, and land reclamation,
20 and we've done some three-dimensional groundwater modeling.
21 Many of these projects, I was either the principal in charge or
22 the project manager. We did a water master plan for the Placer
23 County Water Agency, and more importantly recently here, we've
24 completed one, a water conservation master plan for the Oakdale
25 Irrigation District, and have worked up in Colusa.

26 The office over the last ten years has grown to 40 or
27 50 people and established a good base for an additional
28 engineering firm in this area.

1 I had the opportunity a couple years ago to go to
2 work for Camp Dresser & McKee, which is a large, well respected
3 civil engineering firm, starting operations in Sacramento. I
4 was responsible for the Sacramento Valley and San Joaquin Valley
5 operations. In that short tenure before coming here, we did a
6 water conservation and environmental enhancement project for the
7 City of Visalia, which I think you'll hear more about by one of
8 the ladies here today. And we also did the Central Valley
9 Improvement Act, the plan of action study for the Bureau of
10 Reclamation. And these endeavors have kept us, myself, very
11 current with some of the happenings and the dynamics of water
12 resources within the State of California here.

13 My personal speciality is in water reclamation,
14 irrigation, water resource master planning, and I have over the
15 years have probably written more than 30 papers on water
16 conservation, reclamation, and re-use.

17 I'm a registered civil engineer within the State of
18 California. I'm a registered agricultural engineer within the
19 state. I served for 15 years on the Orange County Resource
20 Conservation District Board of Directors, working with
21 conserving soil and helping in flood control and drainage
22 issues. I served eight years with the Council of California
23 Growers on the Board of Governors.

24 I'm a graduate of the California Agricultural
25 Leadership Program, Class V here within the state. Past
26 President of the Tustin Rotary Club, and I'm currently a member
27 of the East Sacramento Rotary Club.

28 I have lived in the San Joaquin Valley a good part of

1 my life, in Southern California for almost 20 years, and the
2 last 10 years in Northern California. I know this state. I
3 know it very well. I know the water resources and many of the
4 concerns that we share.

5 I've been married for 33 years. I have three
6 daughters and three grandsons. And I'm honored to be before
7 this Committee.

8 CHAIRMAN LOCKYER: Thank you very much, sir.

9 It's quite an impressive resume and work history, and
10 I appreciate the fact that you were able to continue to explain
11 all of that to us while we read all these documents that they
12 give us. We could listen and read at the same time. Thank you.

13 Questions from Members of the Committee? Senator
14 Ayala.

15 SENATOR AYALA: Mr. Brown, the Racanelli decision was
16 about, what, ten years ago now, ten or twelve years ago,
17 indicating that the Board must set standards in the Bay. We
18 already have standards in the Delta.

19 You're having public hearings now to determine the
20 standards for the Bay, quality standards. How far along are you
21 with those hearings, and when do you think the Board will come
22 forth with some standards?

23 And once they set the standards, where will the
24 additional water come from to meet those standards?

25 MR. BROWN: The problems within the Bay, and indeed,
26 many of the problems throughout California, I believe, stem
27 from the fact that we have more demands on this water resource
28 than what we have supply.

1 Part of the solution to the concern in the Delta,
2 Senator Ayala, is to try and to develop a program to where we
3 can, in a sense, balance out the demands with the supplies. And
4 the major problem that we're all having to address in this state
5 is the existing shortfall that we're currently experiencing of
6 about two million acre feet a year, which is being made up by
7 mining the groundwater basin for the most part in the Central
8 San Joaquin Valley on the east side, but that shortfall is
9 projected to grow to four, to five, to maybe six million acre
10 feet by the year 2010.

11 That's the real answer to that question, is how can
12 we get enough water to meet the demands within the state for the
13 increasing environmental needs, and the agricultural needs, and
14 the growing population within the state.

15 We will start our evidentiary hearing on the
16 Bay-Delta in April. And through the Porter-Cologne Act, we're
17 required to have an open hearing where responsible and
18 interested entities can come and testify on behalf of what needs
19 and should be done, and what standards should be set in that
20 Bay, and that will begin in April.

21 SENATOR AYALA: That's not the first hearing,
22 however, in April. Haven't you had some along the way already
23 in terms of public hearings, input from the public?

24 MR. BROWN: On 1630, yes, we did, but right now, we
25 -- our triennial review is coming due, and that begins in April,
26 sir.

27 SENATOR AYALA: Obviously, the Bay will need
28 additional fresh water into the Bay to meet those standards.

1 I'm not sure where this water's going to come from, because all
2 the water in California's committed already. We'll have to
3 develop a new source to meet those standards. Otherwise, those
4 who are using it today will lose.

5 According to Racanelli, anyone who diverts water
6 before it reaches the Delta will be assessed accordingly. That
7 means the Northern farmers, and the Central Valley Project, the
8 State Water Project, everybody's going to give up some,
9 including Hetch Hetchy, which San Francisco doesn't think
10 applies to them, however. But I think it does, according to the
11 courts.

12 So, where are we going to get additional water to not
13 only meet the Delta higher standards, which has also been
14 requested, but the Bay as well?

15 MR. BROWN: There's some criteria that I believe
16 strongly that we should set in establishing whatever we do in
17 water resources within this state.

18 And the basic criteria is that after we decide what
19 all entities need, whether it's agriculture, the environment,
20 and the domestic requirement, is that at least we as water users
21 of today will not use more water than what we are entitled to.
22 That we will somehow or another develop a program to where we
23 will cease mining water from groundwater basins, and, in a
24 sense, pay our own way in water resources.

25 That, I think, we can agree to, regardless which use
26 -- water use faction you come from: the environmental
27 community, or the agricultural community. It's not our intent,
28 it certainly is not mine, to be using my children's water.

1 So, if we can establish an agreement between
2 ourselves that at least in water resources, we will pay our own
3 way, regardless what program we accept, and if we agree to pay
4 our own way, and we recognize there's a shortfall, then we have
5 two options, to answer your question.

6 The two options, to answer Senator Ayala's question,
7 is that we either develop new water supplies with new projects,
8 or we reduce our demand if we're going to pay our own way.
9 That's the only two options there are, or a combination of those
10 two.

11 And if we look at reducing or increasing the
12 supplies, we have the Auburn Dam, the Cottonwood Creek
13 Reservoir, Los Banos Grande Dam, Kellog Reservoir, Kern County
14 Groundwater Bank, and all the facilities that we've been working
15 on -- Auburn Dam for 26-27 years, and we haven't built it. We
16 haven't built a new project in this state since 1982 of any
17 magnitude.

18 So, if we look at trying to be able to pay our own
19 way with new projects, it's going to be a difficult task to do.
20 If we added up the increment in yield of all of these projects
21 under consideration right now, the total increment in yield is
22 about 1.2 million acre feet. And the state's going to be
23 looking for 5, 6, 7 million acre feet to pay our own way.

24 Then we can start to focus on, maybe if new projects
25 can't resolve the problem within the state, maybe reducing our
26 demand through conservation, reclamation, water marketing, water
27 transfers, consumptive use, tail water recovery, everything from
28 bricks in toilets to swimming pool covers. There's a hundred

1 options that we could talk about; some make sense, and of
2 course, some don't.

3 And I think part of our charge would be, Senator, to
4 find out which one of those options make the most sense.

5 SENATOR AYALA: Has the Board officially or
6 unofficially discussed Auburn Dam, construction thereof?

7 MR. BROWN: Not with me, Senator, and not since I've
8 been on board.

9 SENATOR AYALA: Thank you.

10 MR. BROWN: But the question is, Auburn Dam, I think
11 the real question is: what are the best options to pay our own
12 way? And if Auburn Dam is one of the better options to do this,
13 then I'm for Auburn Dam. If it's not, then we shouldn't be for
14 Auburn Dam.

15 But I think when we go through the analysis, it's
16 hard to build anything in the State of California today without
17 some negative opposition or some entity getting hurt. But
18 hopefully, the negative part of any of these projects, whether
19 they're new projects or conservation projects, will be much less
20 than our doing doing and continuing to mine. That we can't do.

21 SENATOR AYALA: It seems to me we're going to have to
22 develop a new source of water before we can meet those
23 standards, otherwise, everybody in the state is going to lose.
24 Up and down the state there'll be a shortage of water all over.

25 Auburn Dam, as I propose it, would provide a 2
26 million acre foot of, you know, dam that would provide the first
27 increment of that going to the Bay to meet those standards
28 without losing water for any other use. In other words, we

1 wouldn't gain anywhere, but we would solidify that which we
2 have, and still take the standards in the Bay into consideration
3 as provided by you folks.

4 Thank you.

5 MR. BROWN: Yes, Senator.

6 I think we have to look and reflect on all of our
7 options, and certainly Auburn Dam is a major consideration. But
8 we do need to pay our own way and develop our program within
9 this state to where we quit using water from future generations.

10 SENATOR AYALA: Thank you.

11 CHAIRMAN LOCKYER: Senator Petris.

12 SENATOR PETRIS: I come from a brick in the toilet
13 district. We have done a very good job through the East Bay MUD
14 District in educating the users about the importance of
15 conservation. And we had the big drought, you're probably aware
16 of this, some pretty severe measures were adopted. Most of
17 them were voluntary, and they were going to be followed by
18 mandatory, but the voluntary program worked out so well that it
19 wasn't necessary to go to the harsh methods.

20 For years afterward, these habits continued. I guess
21 we're creeping back up slowly, but it's been very impressive.

22 So, I'm interested in conservation. At one time,
23 Senator Ayala had a major water bill, which covered a lot of
24 areas, which had 18 amendments offered on the Floor, every one
25 of which was defeated. Then the 19th amendment was mine,
26 requiring a goal of 2 million acre feet of conservation to be
27 established by the Board and reached by a certain year. But I
28 don't remember if that bill ever passed; my recollection is, it

1 probably didn't.

2 So, my first question is, what is your assessment of
3 the degree of water conservation generally throughout the state
4 at the present time? You mentioned we ought to be doing more.
5 Just how well are we doing? What kind of a grade do you give
6 us, and how much more do you feel, if any, should be done?

7 MR. BROWN: There's several kinds of conservation,
8 Senator.

9 What your constituency has been doing in your area is
10 remarkable. I think you were down to 160 gallons per day per
11 capita, as I recall.

12 SENATOR PETRIS: Yes, that's right.

13 MR. BROWN: And that's a tremendous help.

14 The agricultural community in this state uses about
15 80-85 percent of the water within this state, and the domestic
16 water use community and incidental use uses the other 15
17 percent.

18 There are some opportunities with domestic water use
19 conservation, like your area has exhibited, and certainly the
20 Southern California area whence I come from are doing similar
21 kinds of activities, and their water use per capita has dropped
22 considerably.

23 There's other water conservation programs of taking
24 treated municipal and industrial waste water for re-use, and I
25 think we have a lot of opportunity to do that in this state. We
26 have a program that's pending before our Board right now where
27 the Salinas Valley area, the Monterey area, is starting to go
28 into a full reclamation program, and to help an area over there

1 that has sea water intrusion within one mile of downtown
2 Salinas.

3 I think last year, we only used about 500,000 acre
4 feet of treated municipal and industrial waste water within the
5 whole State of California. So, I think that there's some real
6 opportunities in this kind of reclamation program. Indeed, the
7 City of San Francisco is contemplating a program now, or
8 studying one, to take all of the treated municipal and
9 industrial waste water from the whole Bay Area and bring it over
10 to the California Delta-Mendota Canal with the Bureau of
11 Reclamation, and possibly put it in and use it for irrigation in
12 lieu of fresh water with the Bureau of Reclamation and the
13 Central Valley Project.

14 Those are the kinds of ideas where I think we're
15 going to have to look at very hard. I don't know whether they
16 make good economic sense or not, but certainly they make sense
17 as far as being good in principle and concept.

18 SENATOR PETRIS: Groundwater management is kind of
19 related to that, too; isn't it?

20 MR. BROWN: Yes.

21 SENATOR PETRIS: We've had a tough time getting the
22 help from the farmers traditionally. For years, we've had
23 efforts to impose some kind of a standard requirement for
24 groundwater, and it's always been defeated because of their
25 opposition. We did have a statute passed in 1982 that started
26 us in that direction.

27 What is the current status of groundwater management?
28 Are we doing any good there?

1 MR. BROWN: The State Legislature, I'm sure, as this
2 honorable Committee knows, has passed some excellent legislation
3 recently to help provide a vehicle for water districts and local
4 entities to provide leadership in groundwater management.

5 I believe that -- or, at least my philosophy is, as
6 long as we can, and if we have local entities willing to exhibit
7 groundwater management and control to take proper care of their
8 basin, and to make sure we don't have salt water intrusion, or
9 groundwater basin degradation, and if we can have those controls
10 on a localized basis, I favor that.

11 If, for whatever reason, the local communities are
12 not able to exercise that control, then we have the State Water
13 Resources Control Board to fall back on to make sure that it is
14 maintained.

15 And we're experiencing similar concerns right now in
16 the Salinas groundwater basin. But we have asked the local
17 entities to move forward quickly to help identify and resolve
18 these problems over there, and I'm pleased to say they're doing
19 that.

20 But groundwater basin management, groundwater basin
21 water quality, is one of the top three concerns within the State
22 of California.

23 SENATOR PETRIS: Do you have the authority to require
24 the local districts to adopt a plan if they either are remiss
25 in doing it or if they outright refuse?

26 MR. BROWN: If a basin is in threat of being degraded
27 for water quality, yes, we have that authority. And we can
28 assign a water master, and then, through the quasi-judicial

1 proceeding, allocate water supplies within the basin. But it
2 has to be threatened before we become involved.

3 SENATOR PETRIS: And who determines if it's
4 threatened?

5 MR. BROWN: Our State Board.

6 SENATOR PETRIS: Your State Board does?

7 MR. BROWN: Yes.

8 SENATOR PETRIS: I have a question on enforcement of
9 water quality standards. There has been a combination of
10 agencies which set down certain minimum water quality standards.
11 After it was learned that there'd been a lot of violations, in
12 fact, just within the last couple of years, I understand that on
13 the Delta, water quality requirements are 182 days during the
14 water years '92 and '92, they had a total of 289 separate site
15 violations on quality. And yet, in June of last year, the Board
16 informed the Project operators that there wouldn't be any
17 enforcement, which is something I don't understand.

18 Can you enlighten me on that? This was probably all
19 brewing before you went on the Board, but I would like, for
20 information, to know what the justification is for refusing to
21 enforce the water quality standards in the Delta.

22 MR. BROWN: Senator, I do not know what went into
23 that decision.

24 And you're right. I did start on July 15th, so that
25 decision was made before I came on board, and I really don't
26 know what went into the Board's mind or the reasoning for doing
27 that.

28 SENATOR PETRIS: It has to do with the federal

1 statute and with our own Porter-Cologne statute, and so forth.

2 I'm concerned, since I also live in an area where my
3 constituents are directly affected by what goes on in the Delta,
4 and how much water we get. And we appreciate Senator Ayala's
5 efforts to protect the Delta and the amount of water exported,
6 and so forth.

7 We're also interested in water quality, so I would
8 appreciate it if you would look into that and find out why they
9 decided, in spite of these federal and state statutes, and in
10 spite of the appropriate board's recommendations, this hasn't
11 been done. It's kind of disturbing.

12 Now, you say we made a good start in regulation of
13 groundwater, but I understand we don't have a plan, overall
14 master plan, for the whole state in place, and we're one of only
15 two states in the drought-stricken west, which, you know,
16 traditionally we are told we live on the edge of a desert, and
17 we feel the impacts all the time. And yet, we don't have a
18 groundwater management plan.

19 Would you say we're far enough along now as a result
20 of recent actions by the Legislature to develop such a plan?

21 MR. BROWN: We have the vehicle. We have the
22 legislation and certainly the encouragement from the Legislature
23 to do this.

24 Local districts are becoming more and more concerned
25 because, as the water shortfalls continue to grow throughout the
26 State of California, whether it's in Salinas, or in the San
27 Joaquin Valley, or your area, or in others, local entities are
28 becoming more concerned and are picking up the ball to form

1 their own groundwater management program, which is what should
2 happen in this state.

3 I think that the state agencies can play a role in
4 helping to coordinate and pull these plans together, not only
5 the groundwater, but with surface water, too. Surface water is
6 the key, I think. If we have enough surface water to meet the
7 demands, then we won't have to be mining groundwater basins.
8 And I believe that the state has a role to help coordinate and
9 develop a master plan within the state to balance out supplies
10 with demands, and see to it that we stop mining the groundwater
11 basins.

12 I'm not sure what role our Board will play in that.
13 I know we have a responsibility, and we have the authority, and
14 we will surely be involved, though.

15 SENATOR PETRIS: So, you have now what you didn't
16 have before, which is --

17 MR. BROWN: That's right, Senator. We have the need,
18 we have the legislation, and we have the authority.

19 SENATOR PETRIS: So when do we get the action?

20 MR. BROWN: As soon as I get out of here.

21 [Laughter.]

22 SENATOR PETRIS: May he be excused now, Mr. Chairman?

23 [Laughter.]

24 CHAIRMAN LOCKYER: Be careful. We're getting close
25 to a court decision.

26 SENATOR PETRIS: Let's take all our farm areas in the
27 state, do we have any reports on the percentage of water that
28 they are allocated and use which is being saved in some

1 conservation? How are they doing?

2 MR. BROWN: In certain areas of the state, they're
3 doing excellent.

4 The west side, as an example, which I'm very familiar
5 with, in the San Joaquin Valley, they're doing excellent because
6 they have to. They've been hit rather severely with the Central
7 Valley Improvement Act, the Miller-Bradley bill, which dedicated
8 a substantial quantity of water, maybe as much as 1.5 million
9 acre feet, out of the Central Valley Project for required and
10 increasing environmental needs. This, along with the drought
11 that we've had for years, and the declining water supplies, has
12 forced many of the growers on the west side to come out with
13 improved irrigation methods, higher value cropping patterns.
14 And even with that, many of them have had a difficult time, and
15 some of my friends that I've worked with for years, I know, have
16 gone bankrupt because it's hard to irrigate 100 percent land
17 when you only have 50 percent water.

18 The Imperial Valley, I was down there last week, and
19 I was extremely impressed with what they have done over the last
20 six, seven years with their new management. They have come up
21 with conservation methods of lining the canals and tail water
22 recovery, and are taking those quantities of water conserved,
23 and are diverting them at Parker through existing facilities
24 into Southern California for domestic use.

25 The drip irrigation, the higher value crops, this
26 state produces \$18 billion a year in agricultural economy. We
27 have just under 10 million irrigated acres within the state.
28 And all in all, the agricultural community is a very efficient

1 user of water.

2 But there are areas within the ag. community, as well
3 as within the M and I water users communities, that we can
4 conserve. There are areas where we have marginal crops on
5 marginal lands with low payment capacity on these crops where
6 there's some opportunities to take water off these lands through
7 water monitoring and transfers and divert them for higher value
8 water needs, either in agriculture or elsewhere.

9 But it will take a combination of these things, not
10 only in the agricultural community, but the domestic water users
11 community, if we stand a chance of generating enough water saved
12 and conserved, and with new projects, to pay our own way in this
13 state.

14 SENATOR PETRIS: Is the Board pretty much in touch
15 with the agricultural community on these things? Do you meet
16 with them, or do you put out bulletins? How do you go about
17 working with them?

18 MR. BROWN: I've spent 30 years in this state working
19 in water resources mainly in the agricultural community, and I
20 know it very well. That's my assignment and part of my duties
21 while I serve on this Board.

22 So, I'm able to convey my knowledge to the other
23 Board members, but we have -- our other Board members are also
24 knowledgeable in these areas, and I think collectively, we have
25 a good team to evaluate the suitability of some of these options
26 to conserve, save, or reclaim water.

27 SENATOR PETRIS: How does the Board do its work? Do
28 you go through local water districts, agriculture irrigation

1 districts, and so forth?

2 MR. BROWN: Yes. I've been to several water
3 districts, and irrigation districts, and domestic water user
4 communities since I've been on this Board, numerous ones.

5 I believe you do have to get out to see what's
6 happening and take a look in the field. The Imperial Valley was
7 an excellent example. The last time I was in the Imperial
8 Valley was ten years ago, and I was not impressed with what was
9 being done then. But as I walked away last week and saw what
10 they're doing down there to save, and take the water that's
11 conserved and divert it through existing facilities into
12 Southern California is remarkable. I'm very pleased with that.

13 There's other examples in the San Joaquin Valley,
14 because of the salt problem, that the growers have on the west
15 side particularly, that they have to be extremely efficient,
16 otherwise, they build up an accumulation of salt in the root
17 zone, and then they're dead.

18 SENATOR PETRIS: We've seen that more than once.

19 MR. BROWN: That's probably the number three problem
20 within the state.

21 SENATOR PETRIS: You mentioned lining of the ditches.
22 What are they lining it with?

23 MR. BROWN: Concrete, slip form concrete. And these
24 are big ditches.

25 The thing with the Imperial Valley, if water
26 percolates down past the invert of the ditch, it percolates into
27 a saline groundwater basin and it's lost. If water percolates
28 in the San Joaquin Valley down past the root zone due to over

1 irrigation, well, it's picked up by a groundwater basin that's
2 in decline; it's salvaged.

3 SENATOR PETRIS: Does drip irrigation help on that as
4 well as more economic use?

5 MR. BROWN: Drip irrigation -- with the drip
6 irrigation, we can have an irrigation efficiency around 90
7 percent, which means that nine out of ten gallons of water that
8 you use goes towards the growing of that crop.

9 When you get into furrow and flood drip -- flood
10 irrigation, you're down usually into 50-60 percent efficient.
11 Sprinklers will bring you up close to 70 or 75 percent.

12 So, any time that we can encourage or provide an
13 incentive for a grower to go from one type of irrigation to the
14 other, that's water that's saved.

15 One of the things which the water marketing and
16 transfers might enable us to do is, now, for the first time, a
17 grower who goes in and conserves water has the opportunity to
18 market that water, where before the Central Valley Improvement
19 Act, if you saved 10 percent of your water and you're a Bureau
20 contractor, that water went back to the Bureau.

21 SENATOR PETRIS: Yes, no incentive there.

22 MR. BROWN: There's no incentive. Now, with this
23 bill, there's some things that really hit agriculture pretty
24 hard, but one of the things that really helped agriculture was
25 that it provides an incentive for them to save water. And if
26 they save water, then that water could be marketed to others.
27 And with the money received from marketing, they can consider
28 going into a higher value crop that enables the drip irrigation

1 and the sprinkler systems.

2 But you can't drip irrigate barley or alfalfa, but
3 you can row crops and field crops, but it takes a different type
4 of farming capability, financially and otherwise, to go from
5 marginal crops on marginal lands to high value crops.

6 But with some financial incentives to do these
7 things, it can help the growers, where in the past they didn't
8 have that help.

9 SENATOR PETRIS: So, what is your forecast on these
10 things in the future? Do you think we're going to do better and
11 better?

12 MR. BROWN: Yes, sir, I surely do.

13 SENATOR PETRIS: I hope you nudge them while you're
14 there.

15 MR. BROWN: I will.

16 SENATOR PETRIS: I should say continue to nudge them.
17 I know you've been doing it.

18 Thank you.

19 SENATOR CRAVEN: Thank you, Senator Petris. Any
20 other Member?

21 Is there anyone in the audience who wishes to speak
22 on this subject, either pro or con? Yes, sir, please come
23 forward.

24 MR. COLOGNE: Mr. Chairman, Members of the Committee,
25 I'll only take one minute.

26 I've known John for a number of years.

27 I'm Gordon Cologne, author of that famous Porter-
28 Cologne Act, or infamous Porter-Cologne Act that John's going to

1 have to enforce.

2 And I know of no other person better informed, more
3 intelligent on the subject, and has more integrity than John. I
4 would certainly urge his appointment.

5 SENATOR CRAVEN: Thank you very much.

6 MR. DILLON: Mr. Chairman and Members, Mike Dillon,
7 Executive Director and lobbyist for the California Association
8 of Sanitation Agencies.

9 You already heard much about Mr. Brown's background.
10 From our standpoint, water reclamation and the new issues
11 emerging in the area of watershed management, and abandoned mine
12 drainage, and so forth, are really becoming critical in terms of
13 the need to solve them.

14 We think with Mr. Brown's background, he's in an
15 excellent position to make the Board stronger and to deal with
16 all of the problems confronting it, so we support his
17 confirmation.

18 Thank you.

19 SENATOR CRAVEN: Thank you very much.

20 Next, please.

21 MR. SAGOUSPE: Mr. Chairman, honorable Members of the
22 Senate Rules Committee, my name is Jean Sagouspe. I'm a farmer
23 from Los Banos. I'm also the President of the Central Valley
24 Project Association, which represents 80 member districts,
25 federal contractors, both urban and agricultural users in the
26 state.

27 I'd like to just take a couple minutes to briefly say
28 that I've known John Brown for about 15 years, and the Governor

1 has made an excellent choice in appointing him to this position.

2 In these times of declining water resources in
3 agriculture, I think it's extremely important that our industry
4 have representation on this Board; representation that
5 understands the resulting impacts, and who can fairly represent
6 our industry, along with other competing interests for the water
7 resources in the state.

8 It's extremely important to have strong,
9 knowledgeable members on the Board, members who can provide the
10 leadership necessary to protect and manage our most important
11 life-giving resource.

12 Therefore, I strongly support that you recommend --
13 and I recommend that you nominate John Brown for this position.

14 Thank you.

15 SENATOR CRAVEN: Thank you very much.

16 Yes, sir.

17 MR. SCHNABEL: Mr. Chairman, honorable Members, I'm
18 Ed Schnabel, General Manager of the Sacramento Metropolitan
19 Water Authority.

20 I've known John for many years, and I'm here today
21 speaking from a municipal water user's point of view. I've
22 worked with him on master planning, on water treatment plant
23 design, reservoirs, and raw water supply systems. He has shown
24 a lot of diversification, ability, and what some of us call
25 imagineering, rather than engineering, in putting together
26 projects. He's also been very creative with water conservation
27 recommendations and applications.

28 I know him as a man of great ability, of honesty and

1 integrity. I would hope that you would recommend him for
2 appointment to the Board.

3 SENATOR CRAVEN: Thank you very much.

4 Anyone else?

5 SENATOR PETRIS: Mr. Chairman, may I ask one more
6 question?

7 SENATOR CRAVEN: Yes, Senator Petris.

8 SENATOR PETRIS: I forgot all about San Francisco
9 Bay.

10 The question is, do you feel any special actions are
11 necessary at this time to protect the water quality of San
12 Francisco Bay, or are we doing okay the way it's going?

13 MR. BROWN: It is obvious that we are not doing okay,
14 Senator.

15 The program that we develop to protect the Bay, and
16 how it affects the other water users within the state, needs our
17 very best judgment. The process that we will be venturing upon
18 in the triennial review will take those considerations in hand.

19 SENATOR PETRIS: It sounds like you're going to have
20 some recommendations.

21 MR. BROWN: Yes, sir.

22 SENATOR PETRIS: That's fine, thanks.

23 SENATOR CRAVEN: Senator Ayala.

24 SENATOR AYALA: I will move the nomination or
25 appointment of Mr. Brown to the Water Resources Control Board.

26 SENATOR CRAVEN: Senator Ayala moves.

27 Questions of the Members? There being none, call the
28 roll, please.

1 SECRETARY WEBB: Senator Ayala.

2 SENATOR AYALA: Aye.

3 SECRETARY WEBB: Ayala Aye. Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Beverly Aye. Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Petris Aye. Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Craven Aye. Senator
10 Lockyer.

11 SECRETARY WEBB: Four to zero.

12 SENATOR CRAVEN: We will hold the roll open. The
13 President Pro Tem had to step out for a while, but he'll be back
14 shortly and we'll include him in the vote.

15 Congratulations.

16 MR. BROWN: Thank you, gentlemen, very much.

17 SENATOR CRAVEN: Next we've been asked to take Mr.
18 Tourtelot, Member of the California Horse Racing Board, by our
19 Chairman, and we will do that now.

20 We will ask you, as we ask all of the nominees, to
21 tell us briefly why you feel qualified for the position to which
22 you have been nominated.

23 MR. TOURTELOT: Thank you, Senator Craven, Mr.
24 Chairman, and Senator Ayala, Senator Beverly, Senator Petris.

25 I am Robert Tourtelot, and I appear before you today
26 to seek confirmation from the Senate of my appointment to the
27 California Horse Racing Board.

28 I'd like to introduce my wife, Susan.

1 SENATOR CRAVEN: Nice to have you with us.

2 MR. TOURTELOT: I think it's an understatement for me
3 to say I'm really excited to be here today.

4 A recent study by the Felmeyer Research Associates
5 shows that 1992, the horse industry in California was
6 responsible for 28,200 full-time jobs. Expenditures in the
7 state totaled \$1.65 billion, and review of the horse racing
8 impact on jobs and revenue and taxes showed that the racing
9 industry generated an estimated \$246.4 million. It is, indeed,
10 an economically very important industry to our state, and I'm
11 proud to be a part of it.

12 If I may be permitted, let me briefly give you some
13 background information on myself.

14 I'm a graduate of Redondo Beach High School, having
15 grown up on the Pales Verdes peninsula. My father, Fred
16 Tourtelot, was the second mayor of the City of Rolling Hills. I
17 graduated from the University of Santa Clara with a major in
18 accounting.

19 Following college, I spent two years in the United
20 States Navy, being honorably discharged in 1959. From 1959 to
21 1961, I was a probation officer with the Los Angeles County
22 Probation Department.

23 I entered law school in 1961, and I graduated from
24 Hastings College of the Law in 1964. At Hastings, I was issue
25 editor of the Law Journal, president of the first year class,
26 member of the Thurston Honor Society as well as a member of the
27 Order of the Coif.

28 Following graduation from law school, I became an

1 associate with the Los Angeles law firm of O'Melveny and Myers.
2 After six years, I left O'Melveny and Myers; went to open my own
3 law firm. For the past twenty years, I've specialized in trial
4 work as a plaintiff's trial attorney.

5 I'm an active member of the Association of Trial
6 Lawyers of America. I'm the First Vice Chair of the Small
7 Office Practice Section for the ATLA. I'm a member of the
8 California Trial Lawyers Association also. As such, I am and I
9 always have been an ardent supporter of consumers' rights and an
10 active opponent of the so-called tort reform efforts.

11 Some of my professional involvement since law school,
12 I've been a member of the Attorney General's Voluntary Advisory
13 Council under Evelle Younger. I am presently a member of the
14 Board of Director of DARE America. I have been for four years.
15 I'm very active with the DARE program. As you know, the DARE
16 program is in every state now in the United States, and we're in
17 some 13 countries. It's growing every day.

18 I'm a member of the Los Angeles County Bar Judicial
19 Evaluation Committee, a member of the Judicial Selection Board
20 for Los Angeles County. I am presently a member of the
21 Executive Committee of the Crime Prevention Council of the Los
22 Angeles Police Department. I'm also a specialist reserve
23 officer with the -- police officer with the Los Angeles Police
24 Department.

25 I'm dedicated to using what abilities I have to help
26 make this economically strong industry of horse racing prosper
27 and grow, with a view towards everyone becoming a winner: the
28 state, the fans, the horsemen, and the track owners.

1 I thank you very much for allowing me to appear
2 before you today.

3 I do have an answer to the question, Senator Craven,
4 that you asked as to why I believed I was qualified to serve on
5 the Board.

6 I think that can be summarized in four words, and
7 I'll get into each one of them. The four words are: desire,
8 ability, integrity, and independence. I believe that a person
9 serving on the California Horse Racing Board should have a
10 desire to educate themselves to -- with respect to the issues
11 that are facing the Board, whether they be equine medication,
12 track safety, licensing, simulcasting, satellite wagering, or
13 whatever

14 I believe that during my brief six months on the
15 Board, that I've exhibited an ability to grasp the issues
16 quickly, to study, to spend the time with respect to those
17 issues. As a trial lawyer, I'm faced with cases in geology, and
18 by the time the trial's over, I probably know as much about
19 geology as the experts that I've hired. That's typical of a
20 trial attorney, whether it be geothermal energy or a product
21 liability case. I think the same ability to grasp those issues
22 is something I can bring and have brought to the Horse Racing
23 Board.

24 Second, I said that I think the individual should
25 have an ability to be able to educate themselves and to grasp
26 the issues and understand those, and to make fair and informed
27 decisions on the issues that come before the Board. And I
28 believe I have that ability.

1 Third, I believe that the individual who serves on
2 the Board should have integrity, above all, should have
3 integrity. It's a big industry. There's a lot of money
4 involved, and every member of the Board must have impeccable
5 credentials with respect to integrity.

6 I believe my record as a trial lawyer for 29 years,
7 my being on the Board of DARE, Board of Directors of DARE
8 America, my being a reserve police officer demonstrates my
9 integrity.

10 And finally, Board members should have independence.
11 I don't believe a Board member should be tied to any aspect of
12 the industry, whether it be to the race tracks, or to the
13 horsemen, or to suppliers, or to whatever. I think that you
14 need an independent person on the Board that will approach each
15 of the issues fairly, and honestly, and in good faith.

16 I believe that I have all of those four attributes.
17 That's my brief summary as to why I believe I'm qualified to
18 serve on the Board.

19 SENATOR CRAVEN: Fine, very well.

20 Senator Petris has the first questions.

21 SENATOR PETRIS: In your learning about geology in
22 trial work, did you encounter any groundwater management
23 problems?

24 [Laughter.]

25 SENATOR PETRIS: This is the wrong nominee; sorry.

26 SENATOR CRAVEN: Well, if he was with O'Melveny and
27 Myers, I think he's had more than a little bit of exposure to
28 government somewhere along the line.

1 MR. TOURTELOT: Well, we've had some very successful
2 graduates from O'Melveny and Myers to go into government. One I
3 saw on television last night was Secretary of State Christopher,
4 Warren Christopher, who actually offered me the job when I was
5 in law school.

6 SENATOR CRAVEN: You know, I'm looking at the
7 material that we have. It's very brief, somewhat sketchy.

8 But you have, according to this, in 1956, a Bachelor
9 of Science Degree with the letter "C" in accounting at the
10 University of Santa Clara.

11 What does the "C" stand for?

12 MR. TOURTELOT: The "C" stands for commerce.
13 Everybody in the Business College would get a degree, a Bachelor
14 of Science in Commerce, then it would be economics or
15 accounting.

16 SENATOR CRAVEN: That's very interesting.

17 MR. TOURTELOT: I'm glad you didn't ask me why I
18 picked accounting.

19 SENATOR CRAVEN: I know why I wouldn't do it again
20 myself. I can sympathize with you there.

21 I wanted to ask you one other thing. You mentioned,
22 I believe, that you were a probation officer.

23 MR. TOURTELOT: A probation officer for Los Angeles
24 County.

25 SENATOR CRAVEN: Did you do that right out of school?

26 MR. TOURTELOT: I did that after the service. After
27 college, I went into the service for two years, and then
28 actually I was going to try to go to Southwestern Law School and

1 work in the Probation Department, but I had to work three days
2 solid in the camps, and I never could figure out how I could get
3 all the classes, so I ended up going to Hastings.

4 SENATOR CRAVEN: You may wonder why I'm asking these
5 questions, which are somewhat irrelevant, I guess, to the job,
6 but in looking at this, I have trouble getting everything in the
7 right and appropriate order. I looked at your date of birth,
8 and I see how different it is from my own, and yet the college
9 years and so forth, they don't gee up.

10 We're not going to hold that against you. It's just
11 a matter of interest to me. I'll show it to you after it's all
12 over.

13 MR. TOURTELOT: I can go through them, if you're
14 interested.

15 I graduated from Santa Clara in 1956. I went to work
16 for United Airlines for one year. In 1957, I went in the Navy;
17 I came out in 1959, and I went to work for the County Probation
18 Department for about a year and a half. Then I went to Hastings
19 Law School in 1961; I graduated in 1964 and went with O'Melveny
20 and Myers in June of 1964.

21 SENATOR CRAVEN: Well, now I have another thought.
22 What is your date of birth?

23 MR. TOURTELOT: December 27th, 1934.

24 SENATOR CRAVEN: That's not correct here; the year
25 is, but I'm still going to talk to you.

26 We have somebody who has another question other than
27 those that we've just discussed? Senator Ayala, none. Senator
28 Beverly.

1 SENATOR BEVERLY: No questions.

2 SENATOR CRAVEN: I'll ask if anyone in the audience
3 wishes to offer any comment, pro or con, on the nominee? Here's
4 a lady who is coming forward.

5 MS. CHASE: Good afternoon, Mr. Chairman and Members.
6 My name is Marianne Chase.

7 I'm a thoroughbred owner and breeder in California,
8 and have been such for 20 years. And both my husband and myself
9 have been involved with both and are in great support of
10 Mr. Tourtelot. We've watched him perform at the Horse Racing
11 Board's meeting and find that his judgment on the issues has
12 been right on and has been excellent.

13 I respect the fact also that Mr. Tourtelot is an
14 attorney, and I think we need that in this organization. I
15 witnessed him use his skills on the Horse Racing Board with
16 great success.

17 I'm here speaking as an individual, although I'm on
18 the Board of Directors of the Thoroughbred Owners of California,
19 and I think the majority of our owners are in support of
20 Mr. Tourtelot.

21 SENATOR CRAVEN: Thank you very much.

22 Is there anyone else who wishes to comment? Yes,
23 sir; come forward, please.

24 MR. FRIENDLY: My name is Ed Friendly. I'm a
25 thoroughbred owner and breeder, and I'm here to speak for myself
26 and also for the Thoroughbred Owners of California, which is an
27 association of 1,238 members, all voluntary.

28 I'm not familiar with these kind of procedures. I

1 mean, I wrote the Honorable Bill Lockheed [sic]. I don't know
2 if you've seen the letter.

3 SENATOR CRAVEN: The Honorable Bill Lockyer is not
4 here right now, but he is the Chairman.

5 MR. FRIENDLY: Has this letter been distributed, or
6 would it be appropriate to read it now?

7 SENATOR CRAVEN: Nancy, could you answer that?

8 MS. MICHEL: Yes, it's in there.

9 SENATOR CRAVEN: Evidently it has been distributed.

10 MR. FRIENDLY: Good.

11 If I just might add one thought here, in speaking on
12 behalf of Robert Tourtelot, I'd like to mention that prior to
13 being deeply involved in the multi-million business of horse
14 racing, I was in the entertainment business, running a company
15 called Ed Friendly Productions. Not a very inventive name, but
16 that was the name of the company. Producing such shows as
17 "Little House on the Prairie," and "Laugh In", "Backstairs at
18 the White House," and so on.

19 And I noticed that Mr. Tourtelot has had extensive
20 training and has done extensive legal work in the entertainment
21 business.

22 And if I might add a moment of levity, anybody who
23 can get along with the kooks in show business certainly ought to
24 be able to get along with the kooks in horse racing. We are a
25 diverse group, and I've sat in on most of the six sessions that
26 Mr. Tourtelot had served as a commissioner, and I find it
27 extraordinary that he has assimilated so much information in
28 such a short period of time.

1 We, in the Thoroughbred Owners, and I speak for most
2 of us, think this is the finest California Horse Racing Board
3 we've ever had. We are thrilled at the prospect of having
4 Mr. Tourtelot be a member of that organization and help it.

5 We do have a multi-million dollar business with back
6 up way beyond racing. I don't think people realize how much
7 money's involved in terms of the trucking industry that trucks
8 the horses all over the state of California, the feed business
9 that raises the feed for all those horses, the bedding, the
10 multi-million dollar bedding, down to little things such as
11 carrots. You go to any barn, you'll see bushels of carrots,
12 plus the better's handle, plus the multi-million real estate
13 involved with the tracks, plus us suckers who lose hundreds of
14 millions of dollars annually on these beautiful animals.

15 It's great to have the prospect of someone like
16 Mr. Tourtelot representing this industry, helping California and
17 this kind of tax dollars.

18 Thank you very much.

19 SENATOR CRAVEN: Thank you, sir, very much.

20 Anyone else who wishes to comment?

21 There appears to be no one. Senator Beverly.

22 SENATOR BEVERLY: Mr. Chairman, Mr. Tourtelot is a
23 long-time constituent of mine. I've known the Tourtelot family
24 for a long, long period. In fact, his father and I were young
25 mayors together: I in Manhattan Beach while he was Rolling
26 Hills, a south bay community.

27 So, I'm pleased to recommend confirmation.

28 SENATOR CRAVEN: All right, thank you very much,

1 Senator Beverly.

2 I thought of you when he mentioned the area from
3 which he comes. I thought, well, you've got a landsman there
4 with you.

5 Senator Beverly has moved. There being no further
6 discussion, call the roll.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye. Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Senator Craven Aye. Senator
16 Lockyer.

17 SECRETARY WEBB: Four to zero.

18 SENATOR CRAVEN: Let's hold it open for the President
19 Pro Tem.

20 We will take a ten-minute break.

21 [Thereupon a brief recess was taken.]

22 CHAIRMAN LOCKYER: The roll is open on MR. Brown.
23 It's currently four to zero.

24 Call the absentee.

25 SECRETARY WEBB: Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Lockyer Aye. That's five to zero.

28 CHAIRMAN LOCKYER: The roll is open on Robert

1 Tourtelot, Horse Racing Board.

2 Call the absentee.

3 SECRETARY WEBB: Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 SECRETARY WEBB: Lockyer Aye. That's give to zero.

6 CHAIRMAN LOCKYER: That's unanimous as well.

7 Now we have Doug McGeoghegan, Fish and Game.

8 Good afternoon, sir. Tell us about you.

9 MR. McGEOGHEGAN: Mr. Chairman, Members of the
10 Committee, my name is Doug McGeoghegan.

11 I'm a fifth generation Colusa County farmer. I farm
12 near Maxwell, California, where my folks still live.

13 I was educated in local schools, went to Yuba
14 College, had an opportunity to do a couple of fellowships that
15 were agriculturally oriented, but were where agriculture was
16 de-emphasized, which was probably a benefit in, hopefully,
17 broadening my horizons.

18 I live with my wife and two girls, Kaitlin and Kelly,
19 who are 13 and 10.

20 For the last 20 years or so, I've been involved in
21 various kinds of agribusiness enterprise which basically revolve
22 around raising rice, and I'm still in the agribusiness. I'm
23 involved in land and resource management, wildlife habitat
24 restoration, and even some land grading using high technology
25 laser equipment.

26 My reasons for wanting to be on the Fish and Game
27 Commission, and incidentally, I was appointed by Governor Wilson
28 in April of '93, was because I learned a long time ago that

1 agriculture and other land use practices can be compatible with
2 wildlife resources. One goal of mine when I aspired to get on
3 the Commission was to hope to get my fingerprints on having
4 those practices continue and even expand. California being a
5 tremendously big state and growing very quickly, you know, I
6 think that's a very weighty responsibility, and I certainly
7 don't take that lightly.

8 Some of the affiliations that I've had over the years
9 were, from 1988 to 1991, I was the Chairman of the California
10 Rice Industry Committee. And I guess, although we had a
11 significant amount of nudging from some good folks in the
12 Legislature and around Sacramento, we did manage to accomplish
13 quite a few good things in those days, and everybody's quite
14 aware of the problems that were related to rice herbicides back
15 in the late '80s, and the culmination of all these efforts of
16 mine and folks in the Legislature and growers up country, of
17 course, resulted in those -- those residues in the river being
18 reduced to a level that's been called tantamount to zero, and
19 even resulted in the rice industry getting the Chevron
20 Conservation Award in Washington, D.C. just a few months ago.

21 Together with former Assemblyman Lloyd Connelly and
22 members of the rice growing community, and some other
23 Legislators, Mr. Areias, former Assemblyman Mr. Chandler, and so
24 on, we sat down and attempted to assess the rice industry's
25 strengths and weaknesses, with particular emphasis on the rice
26 burning, and negotiated Assembly Bill 1378, which phases down
27 the practice of rice burning to a level that approximates zero
28 around the year 2000, among some other things.

1 I'm claiming those as qualifications or examples of
2 my -- my feeling that there needs to be balance in these kind of
3 decisions, and that land uses with respect to waterfowl and
4 agriculture can be compatible.

5 With that, I would certainly be glad to field any
6 questions that the Members might have.

7 CHAIRMAN LOCKYER: All right, Senator Petris.

8 SENATOR PETRIS: Thank you, Mr. Chairman.

9 I've looked over this information. When were you
10 appointed, in June?

11 MR. MCGEOGHEGAN: Senator Petris, in April, on or
12 around April 27th, 1993.

13 MS. MICHEL: With an effective date of May 13th.

14 SENATOR PETRIS: Effective May 13, yes.

15 There are a couple or three areas that I wanted to go
16 into. One of them that's kind of dear to my heart has to do
17 with the use of dogs in hunting, hounds, I guess, in hunting
18 certain animals.

19 I carried legislation relating to the mountain lion
20 which was vetoed by the Governor, which would have removed the
21 use of the dogs.

22 Then it went to an initiative, that I had nothing to
23 do with. I wasn't part of that, and that proposal was a lot
24 tougher. It just said: no hunting at all, period, of mountain
25 lions, which was not my idea. I just thought it would be better
26 just to remove the animals, the dogs.

27 At any rate, I have the same bill for the bear, the
28 black bear, especially since I was reminded that our official

1 animal, the grizzly, disappeared in 1922 as a result of our lack
2 of good restraint policy at the time.

3 So, I'm interested now in that same subject relating
4 to the bears that are left, the black bears. I understand that
5 you've been looking into the matter as a result of hearings that
6 we had on that. Your Department indicated that there would be a
7 study made under your supervision, and I understand you've had
8 some meetings in different parts of the state.

9 I wanted to ask you first of all, how many people are
10 on that? Is this a committee that you've appointed, or is it
11 staff of the agency?

12 MR. MCGEOGHEGAN: Well, Senator Petris --

13 SENATOR PETRIS: I'm not familiar with the study.

14 MR. MCGEOGHEGAN: There's several committees, and I'm
15 not exactly sure what the title is, but essentially after the
16 Senate Natural Resources Committee voted 5-4, I guess, against
17 that particular bill, I guess you could say it was relegated
18 back to the Commission.

19 The Commission was hearing that issue anyway. It
20 culminated in -- I guess, a decision making forum was in
21 Crescent City back in late August. The Commission decided not
22 to change the bear regulations with respect to the use of dogs,
23 or radio collars, or anything else.

24 However, and it was mostly, I think, because of the
25 late hour of that particular issue, and because whether one
26 agrees or not with those kinds of practices, the fact of the
27 matter is that there was a group and some infrastructure, and it
28 was an ongoing activity. The Commission admonished the sporting

1 community to get their internal politics in order and come
2 forward with some representatives, because we wanted to address
3 some of these areas with regard to enforcement and so on that
4 were encroaching that were apparently a problem.

5 Interestingly enough, bringing this to present, the
6 sporting community, and the bear hunters, and so on, have been
7 very forthcoming to the extent that they've even proffered some
8 suggestions of their own. And those as to things that can be
9 done that they could characterize as cleaning up their act and
10 making the enforcement job easier.

11 We don't have a finished product out on that just
12 yet, but the Commission has proposed five changes in the regs as
13 part of the mammal regulations that have to do with the use of
14 dogs in hunting bears, and I believe -- and this will have to be
15 confirmed by Mr. Trainer, the Executive Director -- but I
16 believe that the mammal regulations will be finalized in 60
17 days. We'll be hearing more about that tomorrow in San Diego
18 with the next Commission meeting.

19 There are some changes about to take place in some of
20 those regs.

21 SENATOR PETRIS: Have those five been publicized yet,
22 made public yet, or will that be in San Diego?

23 MR. McGEOGHEGAN: I believe --

24 SENATOR PETRIS: You mentioned five changes.

25 MR. McGEOGHEGAN: I believe that they have been
26 publicized, because they were the result of a public comment
27 period a month ago, when everyone had an opportunity on both
28 sides of the issue to make recommendations to the Commission,

1 and that ripened into some suggested changes that the Commission
2 had made.

3 So yes, I believe they have been published.

4 SENATOR PETRIS: Can you tell me what they are?

5 MR. McGEORGHEGAN: Well, a couple of the proposals are
6 eliminate night hunting with dogs. Another one is restrict the
7 use of radio telemetry collars and --

8 SENATOR PETRIS: How is that to be restricted?

9 MR. McGEORGHEGAN: Well, the proposal, as it stands
10 today, as it was recommended, is open ended, I believe. What it
11 suggests is that telemetry collars would not be allowed to be
12 used. That's the way that the basic proposal is that was
13 recommended.

14 And as I understand it, and a lot of this is
15 administrative things are new to me because I'm a junior member
16 on the Commission, is that unless these items are open for
17 discussion, they cannot be discussed further, you know, as these
18 things progress. It's an administrative thing that I can't
19 really elucidate upon.

20 SENATOR PETRIS: Any others?

21 MR. McGEORGHEGAN: There's some lesser ones, and
22 Senator Petris, I just don't recall all those items right now,
23 but I certainly would take some steps to see that you have an
24 opportunity to see what they are.

25 SENATOR PETRIS: Now, these hearings you've described
26 are the Commission's hearings?

27 MR. McGEORGHEGAN: Yes, they are.

28 SENATOR PETRIS: But I understand there's also a

1 separate committee appointed by the Commission to look into the
2 bears specifically; is that correct?

3 MR. McGEORGHEGAN: Yes, that's right.

4 SENATOR PETRIS: Maybe that consists of the --

5 MR. McGEORGHEGAN: That's part of the whole deal. Mr.
6 Owen, Commissioner Owen and I are the subcommittee. We were
7 appointed following our request to the sportsmen in Crescent
8 City to get organized and come back to us so we could discuss
9 some of these things in more detail. And so, this is just all
10 part of the ongoing Commission business.

11 SENATOR PETRIS: So, there's no separate committee
12 consisting of other persons who are not Commission members?

13 MR. McGEORGHEGAN: I'm sorry?

14 SENATOR PETRIS: There's no separate committee
15 looking into this?

16 The report I got seems to be erroneous.

17 MR. McGEORGHEGAN: The separate committee, no. As a
18 matter of fact, the committee consists -- the subcommittee
19 consists of the two Commissioners, and there are representatives
20 that the various houndsmen, hunters' organizations have put
21 forward to discuss this with the Department and the Commission.

22 SENATOR PETRIS: That's as citizens; not as members
23 of the committee, I guess?

24 MR. McGEORGHEGAN: That's correct.

25 SENATOR PETRIS: And you mentioned at San Diego, both
26 sides of the issue were represented?

27 MR. McGEORGHEGAN: The San Diego meeting, sir, is
28 coming up tomorrow and Friday.

1 SENATOR PETRIS: The last meeting, then, was where?

2 MR. McGEOGHEGAN: Well, the last meeting was in
3 Sacramento.

4 SENATOR PETRIS: What's where you had both sides come
5 in and discuss --

6 MR. McGEOGHEGAN: There was input given on both sides
7 of that. That's the way the mammal regs work.

8 In fact, I'd be happy to ask Mr. Trainer to get some
9 information to you on -- that more specifically defines the
10 Department's procedure in the establishment of the annual, soon
11 to be come biennial, animal regulations and the biennial fishing
12 regulations.

13 SENATOR PETRIS: Do you recall which groups are
14 represented on the non-hunters side of the issue?

15 MR. McGEOGHEGAN: Well, in the particular committee
16 that consists of Commissioners and houndsmen folks --

17 SENATOR PETRIS: I don't mean them. I mean at the
18 hearings, when the public comes forward and testifies.

19 MR. McGEOGHEGAN: Well, I can recall one in
20 particular, and that was -- that would be the Fund for Animals,
21 that is usually represented in those public forums. There are
22 other individuals, and I don't recall whether they profess to be
23 representing themselves or any groups, but of note, of course,
24 is the Fund for Animals and the Mountain Lion Foundation.

25 SENATOR PETRIS: There's been a push for a different
26 approach to management of the animal kingdom in our state, that
27 is the wild animal, to go to a multi-species approach instead of
28 concentrating on each one separately.

1 Are you in favor of that? Does that seem to be a
2 good approach?

3 MR. MCGEOGHEGAN: Well, it's -- it's kind of like
4 stealth technology ten years ago. We all knew what we wanted it
5 to do, but didn't know exactly what it was supposed to look
6 like.

7 I favor, you know, and this is just a concept, I
8 favor an ecosystem method of managing species so that they don't
9 become rare, threatened, or endangered, you know. And
10 hopefully, you know, something like that can be developed on,
11 perhaps, a watershed basis, which is just, again, a concept.

12 You recall, of course, the issue regarding the
13 California gnat catcher on coastal sage scrub in Southern
14 California. Apparently, the Secretary of the Interior,
15 Mr. Babbitt, was sufficiently impressed with the ecosystem
16 management concept as presented by Governor Wilson and Secretary
17 for Resources, Doug Wheeler, that he tied the federal listing of
18 the California gnat catcher to that multi-system, or that NCCP
19 concept. And we all cheered that, because it was kind of a
20 milestone. Because now, it's going to be looked at, you know,
21 very, very seriously as perhaps, you know, an alternate means,
22 or an improved means of managing these species.

23 The ultimate outcome, of course, you'd hope that it
24 would make the individual listings and the individual management
25 of these things become a moot issue.

26 SENATOR PETRIS: There are certain kinds of hunting
27 methods that, it seems to me, need particular attention because
28 they're very painful to the animal involved: traps, bow and

1 arrow, dogs sometimes. And it's a state policy that the
2 Commission consider the welfare of the individual animals when
3 looking into these things.

4 Do you agree with that general mandate?

5 MR. McGEORGHEGAN: Well, yes, and sometimes, if you're
6 not involved in that particular kind of activity, sometimes you
7 really don't become cognizant of that fact that it exists until
8 somebody brings it to your attention.

9 At Crescent City, when we were hearing this bear and
10 dog issue last late August, I became aware of the fact that
11 there is a training method that involved putting the target
12 animal inside a cage and letting the thing roll around, and it
13 -- apparently it was to facilitate the training of a particular
14 dog.

15 The Commission, including me, did not look with favor
16 upon that practice, and it was rescinded or taken out of the
17 mammal regs. The privilege was revoked.

18 As I learn about these things, if they're like that,
19 then chances are the answer will be yes.

20 SENATOR PETRIS: How long did that last, that cage?
21 How long did they do that?

22 MR. McGEORGHEGAN: Honestly, I can't tell you. I
23 don't know.

24 SENATOR PETRIS: You don't know whether it was an
25 old, old practice that had been done for a long time, or just
26 tried recently?

27 MR. McGEORGHEGAN: I would just suspect, and I'm not
28 an authority, I defer to the authorities on this, it's probably

1 been in practice awhile.

2 SENATOR PETRIS: I understand that when the
3 Commission completes its work on the bear problem, it's going to
4 issue a report, and that's sometime in April? Is there a fixed
5 date for that?

6 MR. McGEOGHEGAN: I'm going to defer that answer to
7 the Executive Director of the Commission because I'm not sure
8 when the final document will be -- there is a bear document out
9 now, but when the final regulations, mammal regulations, are
10 issued, they will include the portion that has to do with the
11 regulations that are either left to stand, or as they're
12 amended, which will be all part of the greater mammal regs
13 document. And that will be the rules with regard to the use of
14 hounds in hunting.

15 SENATOR PETRIS: You don't know at this point what
16 those rules are going to be?

17 MR. McGEOGHEGAN: No, I don't, sir.

18 I only know that there are five major -- well, two
19 major and a couple of minor changes suggested that have to do
20 with your particular subject.

21 SENATOR PETRIS: There was some controversy over a
22 decision made by the Board, the Commission, involving an animal,
23 I guess, in the desert that's under --

24 CHAIRMAN LOCKYER: The Mojave ground squirrel.

25 SENATOR PETRIS: Mojave ground squirrel. I've
26 never encountered a Mojave ground squirrel, but I'm told it's on
27 the endangered species, but it was removed from that category.

28 Were you present at the time?

1 MR. McGEOGHEGAN: Yes, I was.

2 SENATOR PETRIS: Can you tell me something about
3 that?

4 MR. McGEOGHEGAN: That was my first meeting, and it
5 was in Bakersfield. And apparently sometime before I was placed
6 on the Commission, the County of Kern and others had come
7 forward and requested the Commission look at whether or not the
8 delisting action of the Mojave ground squirrel might be
9 warranted. There was various groups involved.

10 After, you know, considerable hearing -- the meetings
11 last two days, but it seems to me we took testimony on that for
12 a full day -- the Commission moved -- there was five
13 Commissioners present. The Commission voted 4-0, with one
14 abstention, to move to delist the squirrel because, in the
15 Commission's judgment, those various criteria by which a
16 species, either listing or continued listing would be warranted,
17 according to the Commission in the Commission's judgment were
18 not met.

19 I voted on the side of the delisting action. I was
20 amongst the four that moved to delist.

21 That delisting action is currently hung up, I'd guess
22 you'd say, in the Office of Administrative Law, not over the way
23 the decision went but something to do with procedure.

24 SENATOR PETRIS: How does it get there? Did somebody
25 appeal it?

26 MR. McGEOGHEGAN: It's been appealed anyway. But I
27 think -- well, whether or not -- I'm not sure about this. This
28 is a legal question, I'm sure, but I'm given to understand that

1 it -- there might have been a problem with regard to OAL
2 irrespective of the way it went, or irrespective of how it was
3 appealed. But the fact of the matter is that there are several
4 groups that have signed in who object to the Commission's action
5 to move to delist.

6 SENATOR PETRIS: Are you a sportsman?

7 MR. McGEOGHEGAN: Yes, I am.

8 SENATOR PETRIS: Do you fish?

9 MR. McGEOGHEGAN: I do.

10 SENATOR PETRIS: Do you hunt?

11 MR. McGEOGHEGAN: I do.

12 SENATOR PETRIS: What do you hunt?

13 MR. McGEOGHEGAN: Well, I'm predominately a bird
14 hunter, but in my maturity, I guess, the best way to
15 characterize my hunting activities is that I hunt considerably
16 less and enjoy it considerably more. But what I like to do is
17 bird hunt, sir.

18 SENATOR PETRIS: That means ducks and pheasants?

19 MR. McGEOGHEGAN: That means ducks and pheasants.

20 CHAIRMAN LOCKYER: With a Nintendo game you can do it
21 at home.

22 [Laughter.]

23 MR. McGEOGHEGAN: That's right.

24 CHAIRMAN LOCKYER: My roommate does it all the time.

25 MR. McGEOGHEGAN: And by the way, I should point out,
26 I have one of those.

27 SENATOR PETRIS: Do you belong to Ducks Unlimited?

28 MR. McGEOGHEGAN: I do.

1 SENATOR PETRIS: Do you consider their role as a very
2 positive one in the conservation of the species?

3 MR. McGEORGHEGAN: Well, yes, I do.

4 As a matter of fact, Ducks Unlimited had its genesis
5 a long, long time ago, and they operated predominantly in
6 Canada. But the interesting thing is, is that as -- well, let's
7 use the Pacific Flyway, for an example. As Sacramento Valley
8 natural existing wetlands have diminished for various reasons,
9 both agricultural and development, and so on, Ducks Unlimited,
10 among others, have become very much aware that the rice lands of
11 the Central Valley provide a tremendous augment to critically
12 short wetlands.

13 Ducks Unlimited and the Nature Conservancy and the
14 California Waterfowl Association, and the Rice Industry
15 Association, together with the California Department of Fish and
16 Game have been -- have formed a partnership called the Rice
17 Lands Habitat Partnership. And what they're trying to do is
18 investigate to see whether or not putting water on the fields,
19 the rice fields, after harvest instead of burning the residue,
20 and maintain at a depth that's beneficial for all the birds --
21 that is to say, that's 32 or so species of neotropical birds as
22 well as ducks, geese, and tundra swans, and giant garter snakes,
23 and other rare, threatened things in the rice fields -- whether
24 or not that ecosystem can be productive and beneficial to that
25 broad spectrum of creatures.

26 Ducks Unlimited has often been characterized as a
27 hunting organization. Interestingly enough, you know, I find
28 hunters amongst the Nature Conservancy, and some other groups,

1 which sort of surprised me. I don't know why; maybe it's just
2 just a stigma that's attached.

3 DU's concerned about a lot more than just ducks, and
4 our partnership, and all the research we've done, have shown
5 that the activities of DU, and CWA, and the Nature Conservancy,
6 are beneficial to a tremendous broad spectrum of creatures.

7 SENATOR PETRIS: You're a rice farmer?

8 MR. McGEOGHEGAN: Yes, I am.

9 SENATOR PETRIS: Are there endangered species that
10 mess around with rice?

11 MR. McGEOGHEGAN: Well, this is a dynamic number, but
12 I'm given to understand that there is something like 16 rare,
13 threatened and endangered species that live on or about the rice
14 field ecosystem.

15 SENATOR PETRIS: Does that endanger your operations?

16 CHAIRMAN LOCKYER: Has he been talking to Senator
17 Campbell? A "dynamic" number. That's the second time today we
18 had the "dynamic" planning.

19 [Laughter.]

20 SENATOR PETRIS: Yes, I'm making due note of that.

21 MR. McGEOGHEGAN: Would it be easier to say I don't
22 know how many there are?

23 SENATOR PETRIS: Anyway, do they give you a problem,
24 the ones that are on the endangered list, that would urge you to
25 delist them as well, or some of them?

26 MR. McGEOGHEGAN: No.

27 Actually, we've been fortunate, because there's been
28 several creatures, like the Aleutian Canada goose, that was

1 listed by the Fish and Wildlife Service, and so on, and the
2 recovery plans put in place for that have been very successful.
3 And I understand that the Aleutian Canada goose might even been
4 down-listed soon to rare, which is a real success story.

5 I don't know about the elderberry longhorn beetle; I
6 haven't checked in on that one lately.

7 I guess when -- when the law came closest to being a
8 problem is when it was applied to the extent a species was
9 almost listed that, apparently, did not merit listing. And I
10 believe that's the story of the tricolored bird. But
11 interestingly enough, there were so many people involved in
12 that, that the good information got out, and a listing was
13 avoided.

14 Had it been listed, and the listing not been
15 meritorious, yes, it would have been a problem.

16 SENATOR PETRIS: But it didn't become a problem.

17 Do you think the fact that you're likely to encounter
18 in your own work and business the problem of endangered species,
19 does that have any impact on how you treat other endangered
20 species as a member of the Commission?

21 MR. McGEOGHEGAN: Well, I would say yes, because the
22 connotation is that I'm very sensitive to trying to balance, you
23 know, the needs of ongoing business and industry with the needs
24 of wildlife. So yes, it does impact it, and I think it impacts
25 it favorably in my estimation.

26 SENATOR PETRIS: Which direction? Favorably in which
27 direction?

28 MR. McGEOGHEGAN: Well, favorably from both

1 directions, and that is to say, you know, I've always prided
2 myself on trying to take a balanced approach to these things,
3 sometimes even to the extent, as an example, of the rice
4 industry's efforts on the burning and so on, to step into the
5 breach and take a great leap of faith, because we know that
6 there's more people out there than just rice farmers, and
7 there's also people out there that care very much about what
8 happens to some of these creatures.

9 SENATOR PETRIS: Thank you.

10 MR. McGEORGHEGAN: You're welcome.

11 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

12 SENATOR AYALA: We have the California Endangered
13 Species Act and the federal one. Which of the two are more
14 restrictive?

15 MR. McGEORGHEGAN: Well, I'm not a scholar on this,
16 and Mr. Frank Boren, my fellow member of the Commission, is
17 continually admonishing me to become more of a scholar, and I
18 hope, you know, by the time I'm on there as long as he, I will
19 be.

20 But as I understand it, the California Act lists
21 plants and animals, and the federal act, I believe, has expanded
22 that to include other kinds of insects, which I don't think the
23 state act expands to include insects, Senator Ayala.

24 SENATOR AYALA: There's a division of responsibility
25 between the federal and the state.

26 MR. McGEORGHEGAN: Yes, and that's an interesting
27 question.

28 That's why we've thought that if we're going to be

1 implementing the state act, then the best approach to this would
2 be to try to maintain some kind of local control. And when I
3 say local control, I mean trying to implement the state act for
4 the benefit of the state creatures and not leaving a vacuum that
5 the federal government would purport to rush in and fill,
6 because when you get in bed with the federal government, you get
7 more than a good night's sleep.

8 SENATOR AYALA: The Commission has been criticized
9 because at least four of the members come from the fishing and
10 hunting background, and not so much in the protection of
11 wildlife.

12 Do you think there's a balance on the Commission
13 today to do both, protect wildlife and promote the game of
14 fishing and hunting?

15 There is a balance of the members, although four of
16 the members come from a fishing and hunting background.

17 MR. MCGEOGHEGAN: Well, as I understand it today, I
18 don't know that Mr. Owen is a hunter, the gentleman from Orange
19 County. If he is, he probably, you know, might have just taken
20 it up on a limited basis.

21 There are only four members on the Commission today.
22 Mr. Ben Biaggini, of course, his term has expired. But of the
23 four, Mr. Owen, I don't believe, is a hunter. Mr. Biaggini is
24 gone.

25 Mr. Taucher from Long Beach, if he's involved in
26 sporting activities at all any more, it's very little.

27 I'm a hunter, but, you know, I'm not a zealot. I
28 consider myself to be a balanced kind of person and a

1 businessman.

2 The other one, Mr. Frank Boren, is the former
3 President of the Nature Conservancy, and he characterizes
4 himself as an environmentalist, but I think what I would call
5 him is a conservationist. And I would guess that he doesn't
6 hunt, although I've gotten some surprises the last couple of
7 years.

8 SENATOR AYALA: Thank you.

9 MR. McGEORGHEGAN: You're welcome.

10 CHAIRMAN LOCKYER: Other questions?

11 SENATOR BEVERLY: I've got to ask one.

12 I'm just curious. You referred to the giant garter
13 snake?

14 MR. McGEORGHEGAN: Giant garter snake.

15 SENATOR BEVERLY: I'm not a fan of snakes, and I keep
16 reading that in the Natomas area, this snake is prevalent. I've
17 never seen one.

18 How big are these rascals?

19 MR. McGEORGHEGAN: Well, I believe the giant garter
20 snake at maturity can be as much as five feet long.

21 SENATOR BEVERLY: I hope I don't see any out there.
22 They're harmless and nonpoisonous, I gather.

23 MR. McGEORGHEGAN: Nonpoisonous, harmless and
24 nonpoisonous.

25 CHAIRMAN LOCKYER: If you find any about April 1st,
26 I'd like a few.

27 [Laughter.]

28 MR. McGEORGHEGAN: You've got it.

1 CHAIRMAN LOCKYER: I'll think of something
2 appropriate.

3 MR. McGEOGHEGAN: I stepped on one the other day,
4 you'll be happy to know. And just like the document says, they
5 have a terrible smell.

6 CHAIRMAN LOCKYER: Other questions?

7 In your tenure so far on the Commission, what was the
8 toughest decision you had to make, the one that stands out in
9 your mind?

10 MR. McGEOGHEGAN: Well, the majority of our time and
11 effort is spent on, of course, endangered species, environmental
12 restoration, diminishing habitat kind of things.

13 I would have to say it would have been the Mojave
14 ground squirrel.

15 CHAIRMAN LOCKYER: Is there anyone present that
16 wishes to make any comment?

17 MR. MEYER: Mr. Chairman, Committee Members, my name
18 is Shel Meyer. I'm President of NorCal Fishing Guides and
19 Sportsmen's Association, Chairman of the Central Valley
20 Fisheries Coalition, which is made up of 11 of the largest
21 fishing organizations in California.

22 I'm also speaking today on behalf of Zeke Grader from
23 Pacific Coast Federation of Fishermen, and Roger Thomas, who's
24 the President of the Golden State Fishermen's Association.

25 We all support the confirmation of Mr. McGeoghegan to
26 the Commission. We feel since he's been on the Commission, he's
27 done an excellent, and it's been years since we've had a
28 Northern California representative sit on the Commission.

1 So, we urge you today to please confirm him to that.

2 CHAIRMAN LOCKYER: Okay, is there another gentleman
3 that wishes to testify.

4 MR. PALMER: Thank you Mr. Chairman, Members of the
5 Rules Committee. My name is Mark Palmer. I'm Executive
6 Director of the Mountain Lion Foundation.

7 I'm not here to oppose Mr. McGeoghegan today, and it
8 may sound like I am, but in fact I'd rather have Mr. McGeoghegan
9 than some of the other members of the Commission on there.

10 Basically, our concern, again, getting back to this
11 question of, as has been stated several times, the question of
12 balance. And let me give it to you, I guess, from my
13 perspective as a person who looks at the Fish and Game
14 Commission on a regular basis.

15 We have Mr. Biaggini. Mr. Biaggini has left, as was
16 said, and he's -- that position is now vacant. Mr. Biaggini was
17 a businessman from San Francisco and a sport hunter. I'll come
18 back to his vacant position at this point [sic].

19 We have Mr. Al Taucher, and though Mr. Taucher is not
20 a hunter now, but Mr. Taucher owns a gun shop in Los Angeles.
21 He has been a very active and avid hunter in his time.

22 We have additionally Mr. Boren. We supported
23 Mr. Boren very enthusiastically. I believe Mr. Boren does do
24 some duck hunting. He's also an attorney for ARCO, a corporate
25 attorney. Nonetheless, as a former president of the Nature
26 Conservancy, I think he's done an excellent job and I was
27 delighted to support him.

28 We then have Mr. Gus Owen. Mr. Gus Owen, I

1 understand, does do some hunting on the side. Again, he's a
2 businessman from Orange County.

3 And I think you can see sort of a trend we're seeing
4 here. We have people who are involved somewhat in the sport who
5 are businessmen, who are all the same race, who are all male.
6 And it comes a question of what the Commission looks like, and
7 how the Commission is going to look like.

8 Again, that's not Mr. McGeoghegan's fault. I think
9 that's the fault of the Wilson administration, and I've made no
10 secret of our concern with the Wilson administration and what we
11 think they're doing to the California Department of Fish and
12 Game.

13 The public trust and the question of balance, we need
14 to think about that, I think, a little bit, both the Wilson
15 administration, which I don't think is thinking much these days,
16 and the State Legislature, about balance. It's fine to balance
17 the Fish and Game Commission with businessmen and with people
18 with an interest in sport hunting. I think that's fine to have
19 that attitude on there, but the question then comes: what about
20 some of the other commissions? What about the Water Resources
21 Control Board, which advocates water allocations? What about
22 the Department of Forestry and the Forestry Board, which
23 advocates cutting trees down? Are we going to balance them as
24 well to look after the wildlife as well as the Fish and Game
25 Commission, or should, in fact, we have the Fish and Game
26 Commission not be balanced, but be in fact the advocate for
27 wildlife, which, I think, Mr. McGeoghegan will do on many cases;
28 in some cases, he won't.

1 Nonetheless, I think the Fish and Game Commission is
2 the advocate for wildlife, and then you find the balance when
3 those other commissions come together and make their decisions
4 at that level, rather than having a balanced Fish and Game
5 Commission which is co-opted by other commissions making land
6 use decisions and water allocation decisions.

7 The question comes up of the public trust. We have
8 the case of the bobcat, which my organization's been very
9 actively involved in. We had legislation, as you know, before
10 the State Senate.

11 The Fish and Game Commission ignored our request to
12 look at bobcat trapping. Again, this predates
13 Mr. McGeoghegan's appointment, so it's not his issue; it's not
14 something he's dealt with.

15 But here we have the bobcat in California. There are
16 about 100 people in California who trap bobcats for sport and
17 for fur. About a thousand bobcats a year, their skin is trimmed
18 out and they send it off to Europe or Japan, or someplace, and
19 sell it. And those hundred people basically are taking my
20 bobcats, they're taking your bobcats, they're taking the
21 public's bobcats.

22 And the question is: where does the public
23 responsibility of the Fish and Game Commission lie? Where does
24 the public trust lie if we're going to deal with these kinds of
25 questions?

26 Again, that's a broader issue than Mr. McGeoghegan.
27 It's an issue of the Wilson administration and what the Fish and
28 Game Commission -- we're very concerned of the make-up of the

1 Commission.

2 Let's get back to that vacancy that we have. I think
3 there's a way for the Wilson administration to do something nice
4 for us. I doubt they will, but you might want to consider that
5 as part of your charge when you're considering Mr. McGeoghegan's
6 appointment.

7 Again, I think we can work with Mr. McGeoghegan on a
8 variety of issues. Sometimes we disagree, and we'll see how
9 that all works out.

10 Thank you very much for your time.

11 SENATOR PETRIS: Question.

12 Did you or a representative of your organization
13 attend any of the meetings relating to the black bear problem?

14 MR. PALMER: We were not involved. There were a
15 series of Fish and Game Commission hearings held in Crescent
16 City, and there was another one in, I think, Bridgeport, on the
17 other side of the Sierra.

18 We did not involve ourselves in those hearings.

19 Since then, I understand from Mr. McGeoghegan that
20 there's been a subcommittee which has been meeting with the
21 houndsmen. We were not involved in those meetings.

22 Now, as I understand it, the recommendations from
23 that subcommittee are going to be coming before the public
24 through the process of the mammal hunting regulations, and we'll
25 be able to get a look at the product of that subcommittee and be
26 able to comment on it during that process over the next few
27 months.

28 SENATOR PETRIS: But you haven't been invited to join

1 in?

2 MR. PALMER: Not to those subcommittee meetings.

3 We certainly were involved in the public meetings,
4 and that's an open series that anyone can attend.

5 SENATOR PETRIS: You did go to the public meetings
6 and offer testimony?

7 MR. PALMER: We have been to the last one on
8 recommendations. We will be going to them once we get the
9 specific regulations as far -- and take a look at them.

10 SENATOR PETRIS: Were you familiar with the five that
11 he described earlier?

12 MR. PALMER: No.

13 SENATOR PETRIS: You hadn't heard of them?

14 MR. PALMER: No, not yet.

15 I think that this is the publication meeting, if I'm
16 not mistaken, where it comes out and they announce it, and then
17 the public, and then we'll be getting them, presumably, in the
18 next few weeks.

19 CHAIRMAN LOCKYER: Senator Craven.

20 SENATOR CRAVEN: If I may, how do you develop the
21 possessive quality of your rhetoric about "your bobcat and
22 mine", and so forth? How does that come about?

23 MR. PALMER: I appreciate that question.

24 Bobcats, by law, belong to the people of the State of
25 California, but do they belong to anyone? Probably not. That's
26 the legal standing that they have.

27 And certainly, there are room to debate to as to
28 what's the best way to manage bobcats. I'm just wondering if

1 we're not ignoring the greater public interest in order to go
2 for a more narrow interest that attends Fish and Game Commission
3 meetings.

4 SENATOR CRAVEN: I think that's a very good answer.

5 Basically, I think I'm probably as supportive of
6 animal rights, and whatever, as anybody that you're dealing
7 with.

8 MR. PALMER: I think you are, sir.

9 SENATOR CRAVEN: It's somewhat iconoclastic for a guy
10 that grew up in West Philadelphia, but as I get older, I have a
11 greater, stronger, feeling about that, I might add, which maybe
12 strange, but that's the way I feel.

13 But I just wanted to understand what you're saying.
14 Both of you have been, in my judgment, excellent witnesses.
15 I've enjoyed your remarks, Mr. McGeoghegan, very much, and yours
16 I always have enjoyed in times past.

17 Thank you for your answer.

18 CHAIRMAN LOCKYER: Let's see if there are any
19 additional witnesses. Thank you for your comments.

20 MS. HANDLEY: Hello. I'm Virginia Handley with the
21 Fund for Animals.

22 There has been a publication that the Commission
23 staff has put out that's excellent, that summarizes everything
24 that's happened. It's in that publication that there are these
25 five suggestions.

26 I'd asked Mr. Pelsman, who's with the Commission
27 staff, if you had gotten one of those, and he thought that he
28 had sent one to your office, but that would certainly be

1 available. It is an excellent summation.

2 SENATOR PETRIS: Chances are I have received it, but
3 the present condition of my desk makes it very difficult for me
4 to find it. I'll make a new effort.

5 MS. HANDLEY: Get another one.

6 I don't remember all of the five. I know besides the
7 two that were stated of the night hunting, and another one is
8 about the dogs that are on the trucks. You know, they go down
9 the road, and they're sitting on the hoods or the roof of the
10 truck. They may ban that because it appears that people may be
11 hunting from the roadside. You know how the dogs like that.

12 There's another one concerning the guides, to make
13 sure that they're licensed guides.

14 MR. McGEOGHEGAN: Thank you for refreshing my memory,
15 Virginia.

16 Excuse me, but it's a hunter who engages a guide has
17 to check and make sure that that guide is indeed a licensed
18 guide and current.

19 MS. HANDLEY: I attend the Commission meetings
20 regularly, all around the state, so I have seen Mr. McGeoghegan
21 in many instances. I really have to compliment him on the fact
22 that he's always there, for one thing. He is always attentive,
23 always prepared, very professional, inquisitive, asking
24 questions. So, I think he's doing an excellent job of that, and
25 I think he's doing what Governor Wilson appointed him to do.

26 We were pleased in Crescent City when he did vote to
27 remove the temporary permit that houndsmen were getting to
28 possess wildlife temporarily, put them in this rolling cage, or

1 in a burlap bag, to train their dogs, which basically terrorizes
2 the animal, and we never knew whether they were really letting
3 them go again. They did move to rescind those permits.

4 He voted to add the riparian bush rabbit, too --
5 brush rabbit, and I appreciate the pep talk that he gave to the
6 houndsmen in Crescent City. Although we did not get the vote
7 that we wanted, he did give them a good talking to, and I think
8 that has partly resulted in the talks that are going on now, and
9 maybe some of these other issues being settled.

10 I did attend the hearing on the Mojave ground
11 squirrel and listened to a lot of the testimony. I felt that
12 the scientific testimony was very much in support of keeping
13 them on the list, and I felt that the vote was more of an
14 economic one than a scientific one.

15 I'm concerned about a possible conflict of interest
16 when you have endangered species on your own property, and then
17 you're called upon to make decisions about their future. I
18 think there is a potential for a conflict there.

19 I'm concerned about this idea of multi-species
20 management, because I am afraid of animals falling through the
21 cracks, which is a phrase that Mr. McGeoghegan mentioned
22 yesterday: yes, some may fall through the cracks. I don't want
23 to see that happen, and I'm afraid sometimes with multi-species
24 management it's really an effort to, well, let's take them all
25 in one big lump, then a few can be put aside, and we're afraid
26 of that.

27 We have a lot of interest in the Commission besides
28 just the hunting and certainly the trapping. I've had an

1 ongoing effort to try to do something about how animals are
2 killed in the traps once they are caught. Right now, they are
3 clubbed to death, strangled, beaten, choked, very inhumane. We
4 wouldn't allow it anywhere else, in any animal shelter, even in
5 any slaughter house. So, we have that interest besides the
6 hunting methods.

7 We deal a lot, too, with the wild animals in
8 captivity, and that's an important jurisdiction of the
9 Commission. We feel and hope that Mr. McGeoghegan will be
10 sympathetic to those issues, too. And we hope that one day that
11 we can have a more direct representation for our interests on
12 the Commission.

13 Thank you.

14 CHAIRMAN LOCKYER: Is there anyone else present who
15 would wish to speak? Yes, sir.

16 MR. HEMANN: Mr. Chairman and Members, my name is
17 Hans Hemann. I'm representing the Sierra Club.

18 We do not have a position on Mr. McGeoghegan's
19 appointment, but we do have some of the same concerns that the
20 Fund for Animals and the Mountain Lion Foundation have already
21 represented.

22 Thank you.

23 CHAIRMAN LOCKYER: Thank you very much.

24 Did you wish to make any comment that might further
25 -- well, let me ask a question.

26 There's been some expression of anxiety about the
27 general structure and perspective of the Commission members. I
28 guess the issue is resource use versus resource conservation.

1 Could you just provide us any general comment with
2 respect to your philosophy or approach, if there's a tension
3 between those two objectives, and resolve the tension?

4 MR. McGEOGHEGAN: Well, I guess I could take a crack
5 at it.

6 The historical, you know, precedent is that I was
7 raised in an environment where some hunting took place. You
8 know, I inherited that, I guess, part of the legacy.

9 I mentioned earlier that although I enjoy that kind
10 of thing, as people will tell you, particularly up country, that
11 I venture out a lot more often with a camera and a pair of
12 binoculars than I do with a firearm. And I hunt considerably
13 less and and enjoy it substantially more.

14 I guess I'm an advocate with regard to the game
15 things, as I believe in conservation through wise use. Wildlife
16 are not inanimate objects that can be stored on a shelf. That's
17 not an indifferent remark; it's just simply a fact.

18 As you've got finite and diminishing habitat,
19 oftentimes there are surplus animals that can be, quote,
20 "harvested", which is fashionable to say these days. And
21 indeed, that kind of thing is indicated.

22 There are some things that concern me about well
23 meaning attempts, you know, to control predators, because when
24 the voter goes and says, "Stop the killing," and dusts off and
25 presumes that there won't be any more killing of the particular
26 animal, and then the populations grow and are aggravated by the
27 encroachment of humanity and cause problems with people, you
28 know, then people have a tendency to say, "See? If the

1 harvesting would have been apace, or kept these numbers at a
2 level that would control the predation, we wouldn't have
3 children being mauled; we wouldn't have numerous attacks by
4 bears and lions, and so on."

5 That's just a perspective, and it's thought-provoking
6 because, you know, to protect animals is very tantalizing and
7 very compelling. And I don't think anybody here would not be
8 attracted to a scenario where nothing ever dies.

9 But when it comes to the hunting legacy, and for
10 those of us who have been doing it for generations, and based
11 upon that philosophy of keeping those numbers abundant by making
12 sure that they don't reach a surplus beyond their ecosystem, I
13 think that that's desirable and even indicated.

14 But I'm not a zealot, you know. I don't represent an
15 extreme on that on either side; never have.

16 CHAIRMAN LOCKYER: What's the pleasure?

17 SENATOR CRAVEN: Move.

18 CHAIRMAN LOCKYER: I might add, since it's not
19 reflected in our files, that both Senator Thompson and
20 Congressman Vic Fazio have called indicating their support for
21 your confirmation.

22 Call the roll, please.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Beverly Aye. Senator Petris.

28 SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Petris Aye. Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Craven Aye. Senator
4 Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Five to zero.

7 MR. McGEOGHEGAN: Thank you.

8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately
11 3:53 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, 1994.


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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARZ GARCIA, Member
Public Employment Relations Board

SENATOR MIKE THOMPSON

BONNIE NEELY, Member
State Board of Forestry

GIL MURRAY, Vice President
California Forestry Association

ERIC CARLESON
California Licensed Foresters Association

THARON E. O'DELL, Member
State Board of Forestry

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: I guess if we do it in order, and I hate to keep Senator Thompson waiting, but Marz, I guess we've got to start with you. Otherwise, we've got two, and it'll be too confusing, perhaps, but I think Mr. Garcia will be brief.

MR. GARCIA: Should I just start?

CHAIRMAN LOCKYER: Please. How are you today?

MR. GARCIA: I'm fine, Senator. How are you?

CHAIRMAN LOCKYER: How are you liking this assignment, and what do you think about it?

MR. GARCIA: It's enjoyable. You know, you get to deal with real disputes between people. And it's valuable in that they have a place to talk. The institutions keep functioning, and it's efficient because the budget's been knocked from 110 to 40, but we're maintaining the caseload and I do enjoy it.

It's a narrow area of law, but something I studied in law school. I'm glad to be back in it.

As far as I know, I have no opposition at this stage. I won't say too much.

CHAIRMAN LOCKYER: And you do have one supporter.

MR. GARCIA: Do I? Did a letter of support come in, Senator?

CHAIRMAN LOCKYER: I don't know, a supporter that says: "Marz Garcia will be fine."

It's a little underwhelming.

[Laughter.]

1 CHAIRMAN LOCKYER: But it is support.

2 What's the hardest part of your job?

3 MR. GARCIA: Keeping busy enough, frankly, Senator.

4 CHAIRMAN LOCKYER: Really?

5 MR. GARCIA: Yes, really. I think, you know, after
6 we get some more caseload from the charter school situation and
7 some other things, we're going to become more interesting there.

8 There's something else that I think that the
9 Legislative Analyst's Office is going to make a recommendation,
10 and that might become a difficulty, but a manageable difficulty.
11 There's going to be a recommendation, I believe, that the ALRB
12 be merged into PERB, and that could be both controversial but is
13 something that the Legislature will be faced with. And I think
14 that that might be a difficult period of time for us.

15 CHAIRMAN LOCKYER: Can you estimate how many hours a
16 week do you wind up actually --

17 MR. GARCIA: Oh, we're all there on a full-time
18 basis, but it gives us plenty of time to consider the caseload,
19 is all.

20 CHAIRMAN LOCKYER: Members? Questions from Rules
21 Members? Senator Petris.

22 SENATOR PETRIS: What's your impression of the
23 concept that we have in the statute, not very many years, on
24 collective bargaining for public employees? Is that working
25 out?

26 MR. GARCIA: I think so. You know, there are very
27 few strikes any more.

28 From time to time, we get requests for injunctions,

1 but then when we get involved with it, they seem to settle
2 things.

3 I think it's working out because you have now given a
4 place that these people can come to to get their disputes
5 settled, and it's much like the judiciary. A large part of the
6 heat in the dispute goes out if they know they're going to get a
7 fair hearing somewhere and a decision is going to be made.

8 So, I say yes, that the concept does work.

9 SENATOR PETRIS: At what point do you get that
10 dispute? Do you also do a mediation role, or is it all after
11 everything's kind of collapsed and there's no further
12 negotiations?

13 MR. GARCIA: Well, the Board, in addition to handling
14 appeals from disputes, also administers the agency. In the
15 field offices, they entertain complaints. They run elections;
16 they oversee elections.

17 If a charge is made, and there is a complaint that
18 does issue, then it goes to a hearing officer, and that officer
19 will try to mediate the dispute or get them into a settlement
20 conference. Eventually it will go to a full-blown hearing if
21 it's not settled. And then if one party or the other, or both,
22 don't like the results of the hearing, then they can appeal to
23 the Board, and then that's when we get it and act much like an
24 appellate court.

25 We rely extensively on NLRB precedent. The Board now
26 has 1200 precedents behind it, so pretty much everyone knows the
27 rules.

28 If we go back to your initial question, has

1 collective bargaining worked, now that the rules are pretty much
2 established, yes, it works.

3 SENATOR PETRIS: I'm impressed by a 1990 report of
4 the Little Marks Commission. Well, it was the Little Hoover at
5 that time. It says that we in California take five times as
6 long as a New York similar board to make decisions.

7 Is that because we're newer at it, or are you
8 familiar with that report?

9 MR. GARCIA: I think I have heard something about
10 that, but the decisions that are made are pretty well carefully
11 thought out, and I don't know why that is. We don't -- I mean,
12 we have plenty of time to consider the cases, and they do get a
13 thorough review. We review the entire file that went through
14 the hearing process.

15 SENATOR PETRIS: I'm not advocating that we measure
16 your effectiveness by speeding up the process or having a lot
17 more cases per given period of time, but I'm curious about the
18 contrast. I thought you might have looked into that.

19 MR. GARCIA: I think we have five or six hundred
20 cases a year begin the process, and then they fall by the
21 wayside as they get settled or they --

22 SENATOR PETRIS: How many cases?

23 MR. GARCIA: Five to six hundred, if I remember
24 correctly. They get started; they enter the process.

25 SENATOR PETRIS: Thanks.

26 SENATOR AYALA: I have a question for Senator
27 Garcia.

28 What do you consider the most significant problem

1 facing PERB today? What do you see as the biggest problem?

2 MR. GARCIA: We're a little short, I think, in the
3 area of administrative law judges. We could probably use one or
4 two more, because now they have been asked to get even more
5 heavily involved in mediating disputes. And in some cases,
6 staff members are now handling disputes, whereas the ALJs used
7 to handle that before. But we now have some other staff members
8 at a little lower level that are mediating the disputes.

9 But I don't think we have tremendous problems. I
10 think we're able to handle the workload. In the future there
11 may be some difficulty if there is a merger between the two
12 boards, but I don't think there's anything going on there that
13 can't be handled.

14 SENATOR AYALA: Do you have any opinion on collective
15 bargaining for public employees?

16 MR. GARCIA: Yes, I think --

17 SENATOR AYALA: Or binding arbitration?

18 MR. GARCIA: Well, a provision in the law encourages
19 binding arbitration, and the NLRB case law has now made that
20 even more of, let's say, a precedent, and the law encourages it.

21 The parties themselves, if they have agreed to that
22 concept in that contract, it ought to be respected. And when a
23 dispute comes in that is arbitratable or has a grievance
24 procedure, we tend to defer and try to get them to settle it
25 themselves.

26 So, I think it's a good idea. And there's another
27 concept out there called interest-based bargaining, which I
28 think the Legislature has, to some extent, funded. But that

1 also seems to be a workable concept, in that that requires a
2 training process where you take the so-called adversaries, the
3 management and the union, train them to consider how they can
4 make the result of any negotiation a winner for everybody and
5 focus really on what the issues are. That's another thing that
6 has a great potential to cut down the workload.

7 SENATOR AYALA: But you say the law encourages this
8 binding arbitration for public employees?

9 MR. GARCIA: Yes. Between case law and precedent.
10 If the parties enter into a contract that has a binding
11 arbitration provision in it, the law has developed to a stage
12 now where both the NLRB and PERB will defer jurisdiction.

13 SENATOR AYALA: If both parties agree.

14 MR. GARCIA: Have agreed that this is the type -- if
15 they agree in the contract that, let's say, renegotiation of
16 salaries is something that, if they can't get to it, should go
17 through a grievance procedure, or if they have agreed to that in
18 the contract, and we see that in the contract, we will defer
19 until they go through that process.

20 SENATOR AYALA: That's also for salaries, not
21 necessarily for benefits?

22 MR. GARCIA: It could be for anything. All of those
23 are what they call the terms and conditions of employment, and
24 we have jurisdiction over those issues.

25 SENATOR AYALA: Thank you.

26 CHAIRMAN LOCKYER: Other questions?

27 Is there anyone present who'd wish to add anything at
28 all?

1 What's the pleasure of the Committee?

2 SENATOR CRAVEN: Move the nominee to the Floor.

3 CHAIRMAN LOCKYER: We have a motion to recommend
4 confirmation. Call the roll, please.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala Aye. Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Beverly Aye. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye. Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Craven Aye. Senator
14 Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Five to zero.

17 MR. GARCIA: Thank you, Members, very much.

18 CHAIRMAN LOCKYER: Our next matter is the
19 confirmation of Ms. Bonnie Neely.

20 Senator Thompson, do you want to initiate this?

21 SENATOR THOMPSON: Thank you, Mr. President and
22 Members.

23 I'm in kind of a unique position today. I have two
24 of my constituents here for confirmation. The next person that
25 you'll hear from is Tharon O'Dell, who is also being nominated
26 to be a member of the State Board of Forestry.

27 CHAIRMAN LOCKYER: Which one do you like more?

28 [Laughter.]

1 SENATOR THOMPSON: Let me just say on Mr. O'Dell's
2 behalf that I think that he's filling the position of the
3 industry position, a former professor at Humboldt State. I
4 don't think that the Governor could have found a better industry
5 appointment to make.

6 I'd like to say that before I introduce to you the
7 person who I came down to talk about, a good friend of mine, not
8 only someone who's very qualified for this spot, but a good
9 friend of mine, Bonnie Neely, who's a member of the Board of
10 Supervisors up in Humboldt County and was, before her
11 appointment to the Board of Forestry, a member of the Coastal
12 Commission.

13 I think it's important to note, and I understand that
14 there was a letter at the last minute that was filed in
15 opposition to Supervisor Neely. And I guess it was kind of a
16 boiler-plate letter that talked about better balancing the make-
17 up of these boards between people versus industry, and to better
18 err on the side of the people.

19 And I think that it's important to point out that
20 that's where Bonnie Neely comes from. She is a life-long
21 resident of Humboldt County. She went to school there. She
22 went to local schools. She's lived through all the timber wars
23 that have actually divided part of that community. She has an
24 incredible understanding of the personal and the very
25 compassionate feelings that go along with that territory.

26 She's someone whom I have found, and I'll state for
27 the record that we are of opposite party positions, party
28 stripe, but I've always found that Supervisor Neely listens to

1 all sides, listens to everyone, and she has a real desire to do
2 the right thing. She works tirelessly to do just that.

3 I can't think of a better appointment for not only
4 this state, but a better representative for the area than
5 Supervisor Neely. I'm here today to introduce her to you, and
6 to ask that you approve her nomination, you confirm her
7 nomination, and preferably on a 5-0 vote.

8 I'd be happy to answer any questions.

9 CHAIRMAN LOCKYER: That's all you have to say.

10 SENATOR THOMPSON: Thank you.

11 CHAIRMAN LOCKYER: We'll let you go back to your
12 other assignments, but we would like to ask a few things of her.

13 SENATOR THOMPSON: Oh, you're going to ask her
14 questions?

15 [Laughter.]

16 CHAIRMAN LOCKYER: Good afternoon.

17 Do you want to start, maybe, with just sort of a
18 general explanation of your interest and fittedness for this
19 position?

20 MS. NEELY: Certainly.

21 Mr. President and Members of the Committee, I just
22 want to, perhaps, recap some of my qualifications. I have been
23 a County Supervisor for seven years in Humboldt County. I did
24 serve on the California Coastal Commission for five years, where
25 we did deal with a lot of controversial issues, but I think we
26 set some good policy for the state on coastal matters.

27 I am a member of the Resource Protection Committee
28 Board of Forestry, and we're working on the fire plan now for

1 the State of California, and I think my experience with local
2 government will help us when it comes to implementing those
3 plans.

4 My philosophy regarding forestry is that we protect
5 the biological integrity of California forest systems, and that
6 we support achievement of healthy, long-term sustainable
7 forests.

8 CHAIRMAN LOCKYER: You've been doing this for awhile.

9 MS. NEELY: Right.

10 CHAIRMAN LOCKYER: When were you first appointed?

11 MS. NEELY: To the Forestry Board, in June of last
12 year.

13 CHAIRMAN LOCKYER: So, it's been nine or so months

14 MS. NEELY: About nine months.

15 CHAIRMAN LOCKYER: Any tough decisions while you've
16 been there?

17 MS. NEELY: Well, we have resubmitted the rules
18 packages regarding silviculture, watersheds, and late serial
19 successional forest stands, and we have had long discussions
20 regarding those matters. I think we've come to some good
21 conclusions. We introduced some amendments to those bills which
22 I think will ensure that we get long-term plans from our forest
23 producers.

24 I think things have been controversial, but I think
25 there've been good resolutions to the issues.

26 CHAIRMAN LOCKYER: How would you respond to the
27 general criticism that it's inappropriate to have people
28 appointed whose assignment is to represent the public's

1 interest, who are politically and philosophically close to the
2 industry?

3 MS. NEELY: Well, I can only tell you how I make
4 decisions, and that is that I listen to the staff presentations.
5 I listen to the testimony of the experts on all sides of the
6 matter. I listen very closely to what the public has to say,
7 and then I try to make decisions and achieve consensus for
8 policies that are in the best interests of the State of
9 California.

10 CHAIRMAN LOCKYER: Well, maybe to try to get a little
11 more specific, I could ask about the analysis that we've seen
12 from the Sierra Club. Well, the Coastal Commission records; I
13 guess it's from them, or the League for Coastal Protection, one
14 of the two or both, perhaps.

15 What we try to look for, I guess, are general
16 patterns that would reveal philosophy in approach, rather than
17 to relitigate any particular decision you've made.

18 MS. NEELY: I see.

19 CHAIRMAN LOCKYER: I wonder if you could just comment
20 in a general way on what seems to be these numbers. You've seen
21 this?

22 MS. NEELY: I have.

23 CHAIRMAN LOCKYER: On issues of public access that
24 came before the Commission, you were outstanding, especially
25 contrasted to other appointments made by the Governor. And that
26 could be said, I guess, about energy issues also.

27 But when we look at the density and development
28 issues, it kind of looks like there's not been a development you

1 didn't like.

2 Enforcement issues, that you don't believe in any
3 enforcement, and resource and visual questions, low percentages
4 compared, at least, to some of your fellow Commissioners.

5 Can you comment in a general way on that pattern, and
6 how you would explain it or interpret it?

7 MS. NEELY: Okay.

8 First of all, as a Coastal Commissioner, I served as
9 the local government representative from the North Coast,
10 representing the Counties of Mendocino, Humboldt and Del Norte.
11 And with regard to issues of density, I at most times defer to
12 what the local governments want, what the people in the local
13 areas are advocating for.

14 With regard to enforcement issues, I feel that I have
15 a good record regarding enforcement. I think that we have set
16 up some good -- we have had some good legislation that's helped
17 the Coastal Commission implement enforcement rules and control
18 them themselves, and I feel that my record on enforcement is
19 good.

20 As far as --

21 CHAIRMAN LOCKYER: It's zero.

22 MS. NEELY: Well, let me say in general that the
23 Coastal Commission agrees unanimously probably 90-plus percent
24 of the time. So, I'm not sure what specific issues they're
25 pulling out.

26 But there are only four Governor appointees of the
27 twelve voting member Board, that we work together to achieve
28 consensus and to set good policy for California.

1 CHAIRMAN LOCKYER: I certainly share that thought,
2 but they've selected ones where there weren't unanimous kind of
3 consent.

4 MS. NEELY: Right, and I would say that's a small
5 percentage of what the decisions we make are.

6 CHAIRMAN LOCKYER: I'm sure it probably is. You
7 know, we vote on hundreds of things every year. Most of them
8 are not controversial, and it doesn't really say much about our
9 respective philosophies, so we have to select out some of them.

10 But just looking at the other folks that are there,
11 there are people that, on enforcement, cast what these people,
12 at least, think was a pro-conservation vote, and I understand
13 that's their view, 75 percent of the time, 50 percent of the
14 time, 66 percent. The weakest on the Governor's side, other
15 than yourself, Commissioner, is Rick, 25 percent of the time.

16 But you're a zero.

17 MS. NEELY: And I'd have to review that to find out
18 why, if I was absent, or if my alternate was there, or what
19 exactly was the situation. There might be some other
20 circumstance.

21 CHAIRMAN LOCKYER: Three of them are in Malibu and
22 one in L.A. County.

23 Other questions from Members?

24 SENATOR AYALA: I have a question.

25 You are now a member of the Coastal Commission?

26 MS. NEELY: No, I resigned from that in December. I
27 served on there for five years.

28 SENATOR AYALA: You answered my question.

1 MS. NEELY: Okay, thank you.

2 SENATOR PETRIS: May I?

3 I'm puzzled as the Chair is. This League for Coastal
4 Protection, you know, has been around quite awhile, and they're
5 probably a thorn in the side of the agency; that's their
6 mission.

7 I'm also puzzled by the enforcement. The only votes
8 they show as indicated are mostly Southern California.

9 SENATOR BEVERLY: May I ask something? What are we
10 looking at?

11 CHAIRMAN LOCKYER: There's a letter that came in.

12 SENATOR BEVERLY: Yes, I think I have the chart. But
13 the section on enforcement is D, and her name is not above
14 there.

15 SENATOR PETRIS: Well, I'm assuming that the blank is
16 her name.

17 CHAIRMAN LOCKYER: It's carried over from the
18 previous page.

19 MS. NEELY: But everyone else's name is there, but
20 mine's not.

21 SENATOR BEVERLY: I inferred that perhaps it meant
22 that she wasn't present for any of those votes; wasn't a member
23 at the time. Because it's on the other pages, is it not?

24 CHAIRMAN LOCKYER: Are any of these folks present
25 that had anything to do with preparing the chart?

26 My assumption is that, and we could double-check
27 this, because there are --

28 SENATOR BEVERLY: Those are 1992 votes, apparently.

1 CHAIRMAN LOCKYER: They are all late '92.

2 MS. NEELY: I was on in '92.

3 SENATOR BEVERLY: You were?

4 MS. NEELY: Yes.

5 CHAIRMAN LOCKYER: It could have been an alternate,
6 as you've indicated.

7 MS. NEELY: Yes.

8 SENATOR PETRIS: I wonder what recollection you might
9 have to help us out.

10 I also was intrigued by the zero in the enforcement.
11 I don't think, no matter how strong our views are, one side or
12 the other, these are divided into pro-conservationists and anti.
13 I don't think anyone expects 100 percent voting record on either
14 side. So, when you see a zero, it kind of raises the red flag.

15 In going through the votes on enforcement, there was
16 a Malibu grading issue. Staff recommended denial. It's
17 indicated here that it's an anti-conservation vote.

18 The next one is, I guess you were absent from that
19 meeting, and then the next one is another one in Malibu. I
20 don't know what it is, Feldman-something Malibu. So, there are
21 only two there under enforcement. That's not a very long, you
22 know, record to go on.

23 That's why we need you to explain these to us. Do
24 you recall any of the issues?

25 MS. NEELY: Quite frankly, there are so many issues,
26 that I don't remember specifically what those ones were in
27 Malibu.

28 SENATOR PETRIS: I prefer to go through these to give

1 you an opportunity to refresh your recollection. I understand.
2 I don't remember all the votes I cast up here; neither do any of
3 us. So, we all have that problem.

4 But on the overall rating, after getting through all
5 the different categories where the Commission itself comes about
6 a little over half overall, 53 percent, you're rated at 30
7 percent. That, to me, looks like a pretty weak vote with
8 respect to the environment and the mission of the Coastal
9 Commission.

10 I speak as one who was very active in trying to
11 develop that legislation. I think we either failed to get it
12 passed or it was vetoed. I don't recall. But as a result, some
13 of us worked hard on putting the initiative together. And, as
14 you know, the Coastal Commission was adopted as a result of a
15 statewide vote of the people --

16 MS. NEELY: Yes.

17 SENATOR PETRIS: -- which gives it even higher
18 authority than us. So, that's why I'm interested historically.

19 So, when I look at this, and it shows overall of only
20 30 percent, naturally it raises questions.

21 Can you comment on that? I suppose you've seen these
22 analyses that come through.

23 MS. NEELY: Yes.

24 One thing I'd like to comment just on in general is
25 that to be able to access some of the problems that were created
26 in the past, you have to have a project come before you so that
27 you can, perhaps, make some corrections, make some mitigations.

28 You also have to ensure that that project is

1 financially viable; otherwise, people won't move forward with
2 it.

3 And the other comment is that, as I said before, I do
4 align myself with local governments, and I do listen very
5 carefully to what local governments want and what the people
6 want.

7 And I apologize. I wish I'd had time to, perhaps,
8 look at these.

9 SENATOR PETRIS: You see, the problem I have, one of
10 the reasons we worked hard to have a Coastal Commission enacted
11 is that we felt a lot of the cities along the coast were just
12 turning it over to developers. That reflects the city council
13 position. I'm not so sure it reflects the voters in that city
14 in each case.

15 MS. NEELY: I see.

16 SENATOR PETRIS: So, I personally, to be convinced of
17 a strong record, would have to look at something more than
18 support by the local cities.

19 I know in another appointee in another area, we got a
20 lot of letters of approval, but they're all directly interested
21 private companies, and some public agencies, all interested in
22 going this direction. The opposition's interested in some more
23 moderate direction, so that's why I raised the point.

24 Apart from the supporting what the locals, at least
25 through the council, feel is right, do you have other examples
26 to give of support for your positions for the 30 percent as
27 opposed to 70 percent?

28 MS. NEELY: If I understand the question correctly,

1 why my record is at 30 percent?

2 SENATOR PETRIS: Yes, and what kind of support do you
3 have for that, other than the city councils? You mentioned the
4 local --

5 MS. NEELY: Well, I think I have a strong record
6 regarding public access, and that I have advocated to ensure
7 that there's public access, you know, involved with project
8 development.

9 I think that I've been a good protector of the
10 California coastline and have supported projects that help
11 mitigate for the sins of the past, especially in the Southern
12 California area.

13 I have advocated to ensure that all local governments
14 have their local coastal plan adopted and are certified by the
15 State of California. And that's one of the most important
16 things, I think, that I did in my five years on the Commission,
17 was to help local governments get the appropriate money to staff
18 their departments so that they could go ahead and put forth
19 local coastal plans, and to ensure there was protection up and
20 down the coastline.

21 SENATOR PETRIS: Are those plans submitted to the
22 Coastal Commission?

23 MS. NEELY: Yes, they are, and they're certified by
24 the state to be consistent with state law.

25 SENATOR PETRIS: That was also one of our main goals,
26 was to have some uniformity up and down the coast --

27 MS. NEELY: Yes, I'm pleased --

28 SENATOR PETRIS: -- especially on access.

1 MS. NEELY: I'm pleased to say that in the northern
2 part of the state, that all the cities and the counties now have
3 local coastal plans that have been adopted. And that was one of
4 my goals as a Commissioner, was to ensure that that happened.

5 SENATOR PETRIS: All of them in the north?

6 MS. NEELY: Uh-huh.

7 SENATOR PETRIS: Now, do you have any other comment
8 on enforcement?

9 MS. NEELY: Well, I supported the legislation that
10 was developed not too long ago, within the last couple of years,
11 that allowed the Commission to issue cease and desist orders
12 directly by the Commission, and that I felt that, you know,
13 perhaps this doesn't reflect all of the votes regarding
14 enforcement. And I feel that I was supportive of those
15 enforcement rules and laws, and did support them.

16 SENATOR PETRIS: Is there a full vote of the
17 Commission on each cease and desist order, or is that also done
18 by staff?

19 MS. NEELY: Usually it's a recommendation from staff.
20 And my recollection is that if staff recommends a cease and
21 desist, the Commission is very much supportive of taking action
22 after a hearing to support staff in that regard.

23 SENATOR PETRIS: The final word does come from the
24 Commission?

25 MS. NEELY: Yes, it does.

26 SENATOR PETRIS: And that's an area where you say
27 your voting record is very strong?

28 MS. NEELY: I believe that it is.

1 SENATOR PETRIS: Upholding the staff on cease and
2 desist orders.

3 MS. NEELY: Very much so.

4 I did have a letter from the Chairman of the Coastal
5 Commission, who is, if you're interested, a Democrat who did
6 indicate that he felt that I was a good member of the
7 Commission, a thoughtful person, and that I did work with the
8 other members of the Commission to achieve consensus in the best
9 interest of the state.

10 SENATOR PETRIS: I don't remember who that is.

11 MS. NEELY: Tom Gwyn. He's with the Port of Oakland.

12 SENATOR PETRIS: Oh, yes, we got a letter from him,
13 which puzzled me in light of this other analysis.

14 MS. NEELY: Right. I just wanted to bring up that
15 there are -- different people have different perceptions about
16 what the record was.

17 SENATOR PETRIS: Because in that subject, your score
18 is 12 percent, according to this one group, which a lot worse
19 than 30 percent overall.

20 Let's see if you can remember another area.

21 MS. NEELY: All right.

22 SENATOR PETRIS: Visual impact on the coast. I'm not
23 sure I know what that means. I don't know whether you're
24 looking at it from the ocean or from the land.

25 MS. NEELY: From land to the ocean.

26 SENATOR PETRIS: From land to the ocean?

27 MS. NEELY: Right.

28 SENATOR PETRIS: There's an item, May 14th, '92,

1 recommended denial. You voted against the recommendation. So,
2 I guess that was some project.

3 And then September 9, '92, San Luis Obispo, staff
4 recommended no, and you voted the other way. And also L.A.
5 County, June, '92, staff recommended approval, and you voted the
6 other way. That ought to be a plus for you; shouldn't it?

7 Now, there are names here: Yamada. Is he a member
8 of the Commission?

9 MS. NEELY: Yamada, no.

10 SENATOR PETRIS: Or Brown? I don't know what these
11 names mean.

12 Do you remember any of those three visual impact?

13 MS. NEELY: The only one that I might remember -- I'm
14 not 100 percent sure -- was that there was a water tower
15 associated with a project in Mendocino County which was higher
16 than the height limits that are usually allowed in that area.
17 And because water towers, wooden water towers, are an aesthetic
18 part of Mendocino, I mean, they're just part of that community,
19 we did allow a variance of it being so many inches higher than
20 what we normally would as part of the project.

21 SENATOR PETRIS: Which county was that?

22 MS. NEELY: That was the Mendocino one.

23 And as far as the San Luis Obispo and L.A., I don't
24 remember which ones those are.

25 SENATOR PETRIS: Now on access, you're rated at 75
26 percent, and I see a lot of pluses here: Huntington Beach,
27 Serra Retreat in Malibu.

28 A lot of stuff in Malibu?

1 MS. NEELY: Yes. However, since, you know, they've
2 formed a city, they have pretty much decided that they're going
3 to develop their own local coastal plan, and they will not be
4 under what the county standards were. They'll be developing
5 their own.

6 SENATOR PETRIS: When did they form a city?

7 MS. NEELY: It was more than a year ago. They have,
8 through legislation --

9 SENATOR PETRIS: There's also the Monterey Bay
10 Aquarium; you got a plus there, which --

11 MS. NEELY: Wonderful project.

12 SENATOR PETRIS: -- as a fan and frequent visitor,
13 I'm happy to see.

14 Carlsbad, you have a plus. The staff recommended
15 denial.

16 I assume that means denial of some project, some
17 building?

18 MS. NEELY: Right.

19 SENATOR PETRIS: And you said no on that; that's why
20 you get a plus from this particular group.

21 MS. NEELY: I guess that shows that I have a more
22 balanced approach.

23 SENATOR PETRIS: It certainly does in this category.
24 Access of 75 percent, that helps counter-balance the 12. And
25 there's one of 9 percent on density.

26 Is density always a big issue in these things?

27 MS. NEELY: Density can be an issue in Malibu, for
28 instance. You know, they'll be concerned about expanding the

1 sewer systems because that will mean additional housing, and
2 they'll use those types of, you know, means to control what
3 happens in an area. So, yes, density is always an issue
4 locally.

5 SENATOR PETRIS: And my experience has been that
6 local government usually loves density. They want more revenue;
7 they want, you know, just pack them in there and keep building.

8 MS. NEELY: Right. They like a lot of development on
9 the waterfronts for tourist-related project because they think
10 it helps the economy as well.

11 SENATOR PETRIS: Thank you, Mr. Chairman.

12 CHAIRMAN LOCKYER: Is there any member at all of the
13 Board that would seem to bring an environmental perspective?

14 MS. NEELY: On the Board of Forestry, absolutely.
15 Bob Heald, Jim Culver are both educators and are -- Jim, I
16 think, owns a private firm that's very environmentally oriented.
17 They're public members.

18 CHAIRMAN LOCKYER: So, those points of view get --

19 MS. NEELY: Uh-huh, they are represented on the
20 Board.

21 CHAIRMAN LOCKYER: Thinking of your service on the
22 Coastal Commission, I'd be interested in your evaluation, and I
23 don't mean to recommend criticism of anyone, but who do you
24 think is the hardest working, or most thorough, or most
25 persuasive from any point of view, member of the Commission?

26 MS. NEELY: Well, the first person that comes to mind
27 is Madelyn Glickfield, who represents the Malibu area. And of
28 course, she has a lot of -- quite a workload because there's so

1 much going on there. She also is a planner, I think, you know,
2 educated as a planner, so she has a lot of technical expertise
3 that she brings to the Commission.

4 Other representatives, David Malcomb has been on for
5 several years. He's from the Chula Vista area. He's actually
6 an alternate now. He has a lot of history with the Commission.

7 There've been a lot of changes, in fact. I would say
8 the Chair is a very thoughtful person when it comes to
9 protection of habitat and resources, and always explores the
10 issue thoroughly to make sure that all questions are asked and
11 the answers come out so that we are in a position to evaluate
12 and make a decision.

13 CHAIRMAN LOCKYER: Is there anyone in the room who
14 would wish to make any comments, either in support or
15 opposition, to the issue? Yes, sir.

16 MR. MURRAY: Mr. Chairman, Members, I'm Gil Murray,
17 Vice President of the California Forestry Association.

18 I've been associated with the Board of Forestry in
19 various capacities for about the last 12 years, and I've seen a
20 lot of Board members and attended a lot of meetings.

21 I would just like to offer my support, and offer that
22 Ms. Neely brings something unique that I haven't seen in a Board
23 member before. I don't know if it's her natural ability, or as
24 Chairman of the Board of Supervisors or her Coastal Commission
25 experience, but as professional Legislators, you understand the
26 art of compromise and negotiation in trying to reach consensus.
27 And she brings that to her fellow Board members, which I haven't
28 seen a lot of.

1 I think in the nine months she's been there, she's
2 been extremely constructive in trying to work the Board through
3 some of their more controversial issues, and they've had a lot
4 of those in the last year.

5 So, we would offer our support as a public member and
6 hope you can endorse her.

7 CHAIRMAN LOCKYER: Thank you.

8 Anyone else?

9 MR. CARLESON: I'm Eric Carleson, representing the
10 California Licensed Foresters Association. That's 700
11 professionals in the diverse range from private companies to
12 state and federal positions.

13 They, too, are strongly in support of Ms. Neely and
14 have indicated to us that she's been very good in terms of
15 taking in the technical and scientific testimony in the
16 decisions.

17 Thank you.

18 CHAIRMAN LOCKYER: Did I miss anyone that wished to
19 comment?

20 SENATOR PETRIS: I have one more question. It's the
21 most important question, and I forgot to ask you.

22 What is the Chingford School of Music in London?

23 MS. NEELY: Oh, Chingford.

24 SENATOR PETRIS: Can you tell us about that?

25 CHAIRMAN LOCKYER: And what happened to your accent?

26 MS. NEELY: Well, I suppose I could put one on if I
27 need to do it.

28 I was a music major and did attend Chingford School

1 of Music in London, England, majoring in french horn and piano.

2 SENATOR PETRIS: Is that kind of like our Julliard
3 School in New York?

4 MS. NEELY: Well, I'm not sure if it's quite to the
5 standards of Julliard, but it was a very good school.

6 SENATOR PETRIS: Thank you.

7 MS. NEELY: Thank you.

8 CHAIRMAN LOCKYER: What's the pleasure of the
9 Committee?

10 SENATOR BEVERLY: Move we recommend confirmation.

11 CHAIRMAN LOCKYER: All right, we have a motion to
12 recommend confirmation.

13 Let's call the roll.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Beverly.

17 SENATOR BEVERLY: Aye.

18 SECRETARY WEBB: Beverly Aye. Senator Petris.
19 Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Craven Aye. Senator
22 Lockyer.

23 SECRETARY WEBB: Three to zero.

24 CHAIRMAN LOCKYER: Three-zero; recommendation to the
25 Floor.

26 MS. NEELY: Thank you.

27 CHAIRMAN LOCKYER: The next one is Mr. O'Dell, or
28 Professor O'Dell, or whatever the right term is.

1 MR. O'DELL: Good afternoon, Senators, Chairman
2 Lockyer.

3 CHAIRMAN LOCKYER: Do you want to tell us about you,
4 and why you like being on the Board, or do you?

5 MR. O'DELL: The Board is an opportunity to mature
6 philosophically as well as physiologically, at maybe an
7 accelerated rate.

8 But I hail from the Midwest, and I've been in
9 agricultural forestry enterprises my entire life. And I was
10 educated in the Midwest at the undergraduate level, and came via
11 the Rocky Mountains, and then on to the West Coast in '64.

12 I went from graduate school at Oregon State and began
13 as an Assistant Professor at Humboldt State University in '71.
14 Taught at the University until '79, and then took a leave of
15 absence. Worked in the Regional Office for the Forest Service
16 for three years in Portland, and then went into research and
17 development in industry, and came back to California in '84.
18 And I've been in industry in California since that time.

19 I have additionally to that served on the
20 Professional Licensing or Examining Committee for the California
21 Licensed Foresters, and I've enjoyed that appointment for about
22 2½ years. And then my appointment was coincident with Ms.
23 Neely's in June of '93 to the Board of Forestry.

24 CHAIRMAN LOCKYER: Well, as someone, obviously, that
25 is meant to be the industry representative --

26 MR. O'DELL: Yes, I am.

27 CHAIRMAN LOCKYER: -- that's a different kind of role
28 than, perhaps, that which we discussed with your predecessor

1 here, but perhaps you could share any thoughts you have about
2 the resource management side of the issues that you grapple with
3 as a Board member, and what tensions or decisions you find
4 yourself making as a Board member which, perhaps, would have
5 been different than your thinking as a private industry expert.

6 MR. O'DELL: As a participant on the Board,
7 everyone's focus as a constituency is the State of California
8 citizenry, both now and future generations.

9 My involvement as a Board member is to assure that my
10 decisions and participation in that process allows for sustained
11 forestry for now and forever more, and to realize that on that
12 Board, irrespective of our personal needs and desires or
13 agendas, we need to seek balance.

14 This last package, or these last packages, we passed
15 really do achieve balance. It gives new definition to the way
16 we're going to practice forestry. It allows greater
17 environmental sensitivity and more responsible stewardship on
18 properties. It allows greater certainty, which we absolutely
19 find critical in forestry, because our planning horizons are so
20 long, and we've lacked so badly in the last decade, really,
21 because we're always responding to the next crisis. And with
22 the fundamental part of the silviculture package, which is the
23 sustained yield plan, it allows owners of property now to craft
24 longer term plans and greater flexibility of management to
25 implement those plans, and that gives greater certainty that we
26 won't have a crisis always on the horizon we need to deal with.

27 I think that the decisions on the Board always need
28 to be dealing with that kind of forestry agenda, of certainty

1 for planners, certainty for citizens of the state that we'll
2 have a long-term forestry enterprise in this state.

3 We also need to understand as our Board, we deal with
4 private land, not public land. So, that's another ingredient
5 that we always have to take into account, that these are private
6 lands regulated by the state. And so, we have to have balance
7 there from the private perspective as well.

8 CHAIRMAN LOCKYER: You, of course, have been involved
9 in those public controversies: the Sierra Accord, the the Grand
10 Accord and so on.

11 What role or thoughts did you have about those
12 matters?

13 MR. O'DELL: At that time, I was not part of the
14 Board, sitting on the Board. I was a person that could exercise
15 my company's point of view in front of the Board, and I did
16 that.

17 My direct involvement in the accords were not except
18 as in advice or in planning. I didn't have any direct political
19 involvement. There were other people assigned to that from the
20 company that employs me.

21 CHAIRMAN LOCKYER: Do you think your perspectives
22 could or might be different as a private company representative
23 compared to a Board member in those kind of debates?

24 MR. O'DELL: I don't think so.

25 The condition for my participation as a Board member
26 was held after a conversation with the principals of the
27 company, that I need to know that my operation and involvement
28 in the Board was independent of anything except my conscience

1 and my personal integrity in the way I saw things. And I was
2 assured that was true.

3 So, I truly mean that when I operate as a Board
4 member, I operate as a professional forester and not as a member
5 of a private forestry firm of the state.

6 CHAIRMAN LOCKYER: Can you explain to a lay person
7 who's interested but doesn't understand the nature of the splits
8 in the industry? Just the industry's side of these debates,
9 either in terms of the economics, or geography, or philosophy
10 involved.

11 I'll be your student for a minute, if you'll try to
12 sketch it.

13 MR. O'DELL: The basic differences in the forestry
14 conversation or dialogue is mostly along silvicultural
15 prescriptions: how do you manage a crop of trees or an
16 ownership to meet the goals or policies of whomever you work
17 for.

18 And so, some firms are what we call uneven aged
19 management prescriptions; other firms are more even aged
20 management because the climate, the biology of the species
21 you're managing, or the goals of your company fall along those
22 lines.

23 On the North Coast --

24 CHAIRMAN LOCKYER: The difference being --

25 MR. O'DELL: The difference being, even aged being
26 that you treat a stand -- usually all the trees on the property,
27 or most of the trees in the stand are treated the same way at
28 the same time. The cutting prescriptions are, you take off most

1 of that stand, and you very commonly use artificial regeneration
2 on that site.

3 In uneven aged forestry, you take just part of the
4 stand, and you leave other parts of the residual stand then as
5 your seed source, which then provides the seed for the new
6 crops. So, you have multiple ages, multiple sizes, and that
7 works if you have the right biology of the species involved.

8 CHAIRMAN LOCKYER: Then you started to say, "On the
9 North Coast."

10 MR. O'DELL: On the North Coast, our species and
11 climate provides a circumstance where the best kind of forestry,
12 the firm that I work for, has been even aged management. The
13 biology of the trees that we manage respond very, very well to
14 open sunlight.

15 The kinds of forestry we practice on the North Coast
16 has artificial regeneration. We own nurseries. We are
17 interested in optimizing or maximizing the genetic potential of
18 the best trees that compose a forest stand so that future
19 generations of trees will be composed of the best crop trees.

20 So, we take the trees off that are just average. We
21 put best trees back that we grow at our nursery. We optimize
22 the spacing. We put them out there so that they always have
23 room to grow, and we grow them as quickly as we can by thinning
24 that stand, and then perhaps even fertilizing that stand when
25 it's like 30-35 years old so that we can have larger trees in a
26 shorter period of time from the best genetic gene pool that we
27 had to work with.

28 That's as opposed to uneven aged management that

1 usually deals with just the biological diversity on the site.

2 Our view, in even aged management, is we get to
3 better optimize or maximize the site potential. That site will
4 grow an average crop of trees, or it can grow a much better crop
5 of trees through management.

6 On the private side, as you would obviously know,
7 that the economics is to grow the best crop of trees in the
8 shortest period of time you could.

9 CHAIRMAN LOCKYER: What are companies that would be
10 associated with one or other of the emphasis between uneven and
11 even? Are there particular advocates of one or the other
12 approach?

13 MR. O'DELL: Well, yes, I think the advocacy, you
14 inherit your advocacy, basically, because of the tree biology.

15 If you are in the Sierras, for instance, where you
16 have trees that are tolerant, they can grow in shade, and trees
17 that are intolerant that grow in mostly light, and they have
18 trees of intermediate tolerance, then you can manipulate that
19 stand so that trees -- that the stand is opened up. The
20 residual trees will cast seed that can grow up under a shade
21 overstory, and you could always perpetuate a stand on the site.

22 On the other hand, over on the coast, where the site
23 is on average very much better -- it has a higher productivity,
24 has much higher rainfall, higher fertility, better site class --
25 you take the stand off at once, and we grow the next stand all
26 at once. We think that not only the biology is better
27 utilized, but also the economics are much better.

28 I don't believe that there is really a philosophical

1 schism or a chasm we can't cross, but I think that as a forest
2 manager, you're obligated to manage what you're dealt. If
3 you're dealt an area that's very steep, site class not very
4 high, your economics would not allow you to do even aged
5 management because you can't afford the artificial regeneration,
6 for one thing, and carry that capital.

7 So, what you do is, you take a little, leave a
8 little. And you manipulate the stand so that the tree crop is
9 never all removed at once.

10 On the other hand, over on the coast where your sites
11 are better, biology's better, economics are better and we do it
12 differently.

13 CHAIRMAN LOCKYER: Were there splits within the
14 coastal companies?

15 MR. O'DELL: Different points of view? Yes, there
16 are different points of view.

17 Again, depending on which company and what their age
18 class distribution -- how big and how old their trees all are
19 within their inventory -- that largely determines what your
20 point of view would be over on the coast.

21 CHAIRMAN LOCKYER: Questions from other Members?

22 SENATOR PETRIS: As one that's been in the industry a
23 long time, and now you're serving on the Board, if you were
24 given the authority to start over again, let's wipe out the
25 codes, there's no law. I give you a magic pencil and the power.
26 You're the only person on the Board. You're the czar, and I ask
27 for an ideal plan.

28 Would there be substantial differences from the

1 present scheme of things that you would advocate to improve it
2 both for the commercial interests and the general public?

3 MR. O'DELL: May I ask for clarification?

4 Are we starting with virgin, untouched landscapes?

5 SENATOR PETRIS: Yes, let's start from scratch.

6 MR. O'DELL: Oh, no. If we started from absolutely
7 untouched landscapes, and we are starting today -- we're not
8 inheriting the past; we're not trying to improve or repair the
9 past, but starting today -- then we would -- I would advocate
10 we'd enter these watersheds much differently. And we would not
11 do a progressive, even aged management walk through these
12 watersheds, as was done in the past.

13 And that established our age classes that we work
14 with today, by the way. We've inherited what they did in the
15 past, so we're trying to set the stage differently.

16 SENATOR PETRIS: That past predates the laws; doesn't
17 it?

18 MR. O'DELL: It does; that's correct. In fact, some
19 of those watersheds were entered 100 years ago. So, we're still
20 trying to set up different kinds of age classes, vegetation
21 types, and cover classes in these watersheds based on what we've
22 inherited from how they were treated before.

23 And quite frankly, Senator, some of those watersheds
24 are in pretty tough shape. They were harvested and walked away
25 from, and let go for taxes, and many of the more progressive
26 companies have bought those properties and taken that brush
27 type, that low grade hardwood type, off, and invested lots and
28 lots of money to get those back in conifer production to meet

1 the intent of the Forest Practice statute, which talks about
2 maximum sustained productivity. It takes a lot of money to get
3 those watersheds back growing conifers.

4 I digress. We go -- the circumstance where they're
5 all virgin watersheds, no. I would advocate that we enter those
6 much more gently, for one thing. We would not cut or
7 concentrate so much energy or effort in single watersheds, but
8 would rather spread out the harvesting over the landscape.

9 I would also try to design a system whereby the road
10 net would be minimized in miles, and also these seasonal roads
11 would be minimized, because roads can often be one of the
12 greatest difficulties that we have to manage around, old roads
13 particularly.

14 SENATOR PETRIS: Now, moving from day one and
15 confronting our inheritance, all these bad things you say we've
16 inherited, and looking forward to, let's say, the next hundred
17 years, what would your plan be for the next hundred years,
18 taking into account the bad conditions that you've described?

19 MR. O'DELL: It's not all bad. I don't mean to --

20 SENATOR PETRIS: No, I don't mean everything, but
21 having in mind whatever part --

22 MR. O'DELL: There's lots of wonderful landscape out
23 there.

24 But taking the situation as we are today, I would
25 advocate long-term landscape planning. I think that landscape
26 planning is more than just a fad. I think that it's long
27 overdue.

28 We need to look at things beyond the timber harvest

1 plans, site-specific level, and talk about landscapes; talk
2 about watersheds; and talk about the residents, both plant and
3 animals, that inherit those watersheds. And we need to manage
4 them in aggregate, not as single species or as single timber
5 type.

6 And that's what I would -- my earlier comment about
7 certainty, if we had more certainty and longer planning
8 horizons, we can do that.

9 SENATOR PETRIS: What's to prevent you from doing it
10 now on the Board?

11 MR. O'DELL: The way our statute is, the lifetime of
12 our timber harvest plan is only three years, and we can request
13 each of one-year extensions, so the maximum length of time is
14 only five years.

15 Our planning horizon's a hundred years, and it's
16 difficult to manage landscapes from five-year sound bytes.

17 SENATOR PETRIS: Why do we have such a small period
18 there? Why do we say: three years, five years?

19 MR. O'DELL: That was the way the rules were crafted
20 20 years ago, and we've never been able to get that either
21 through the Legislature -- well, it would have to be a statute
22 change.

23 SENATOR PETRIS: So, to adopt the plan you're talking
24 about for the next 100 years, we have to start with legislation.
25 You can't leave it up to individual companies?

26 MR. O'DELL: Oh, yes, we surely can leave it up to
27 individual companies.

28 SENATOR PETRIS: You mentioned the good guys, the

1 good companies came in and salvaged things.

2 Does it depend on the good will of the companies that
3 are out there?

4 MR. O'DELL: To do long-term planning?

5 SENATOR PETRIS: Yes.

6 MR. O'DELL: To some extent, because we don't have
7 any incentive to do long-term planning at the moment. In fact,
8 there's disincentive to do long-term planning because of the
9 uncertainty in the regulations.

10 To invest all that capital in a long-term process of
11 growing trees, we need some certainty that you'll be able to
12 regain that capital when those trees reach merchantable
13 dimensions: 50, 60, 80 years hence.

14 At the present time, we don't have that certainty.
15 We have very short cycle three-year plans. You get the plan
16 approved. You've got three years or up to five, with two
17 one-year extensions, to getting that off, getting that crop
18 rotated, or you have to write a new plan.

19 In that five years, many, many things change in
20 regulation. In fact, almost total overhaul in some of our
21 regulations occur in five-year increments.

22 So, we need greater stability, and I think that these
23 last packages will provide that.

24 And we need to get away from site-specific, small
25 units, to always having to manage pieces of our real estate in
26 20-acre increments. We ought to be dealing with watersheds and
27 landscapes. And we need long-term planning horizons where we
28 can say that we're going to manage multiple watersheds, or

1 multiple planning watersheds, ownership-wide, and look at the
2 continuity of how vegetation is spread over the landscapes over
3 multiple watersheds, and also how do we manage other things that
4 live there, particularly the wildlife.

5 And to demonstrate greater environmental sensitivity
6 and responsible stewardship of these properties, I think you
7 have to do it on a multiple species and a landscape basis.

8 The firm I worked for did just that. In 1989, we
9 were pressed badly by that Northern Spotted Owl. We didn't
10 think there were any owls on the property that I happened to
11 work on. We started surveying to find out, we found lots of
12 owls. They weren't supposed to be there, but they were there.
13 So many, in fact, that we couldn't really operate any more as we
14 had in the past, so we had great incentives to go out and write
15 an owl conservation plan, and we did that.

16 We started in August of 1990, and we got the plan
17 approved in September of 1992. Lots of time, lots of energy,
18 but a landscape plan of adaptive management for a threatened
19 species at the federal level. That's very innovative planning
20 and conversation, in my view.

21 The only one in that whole -- up until just about two
22 months ago, when a firm in Washington got the second one -- the
23 first ever adaptive management plan for a threatened species.

24 SENATOR PETRIS: What's our next step?

25 MR. O'DELL: Our next step, I think, is to do a lot
26 more of that. And the coho salmon is going to do that for us.
27 You know, we're in the same kind of planning mode right now for
28 the fish that we were in the owl in 1990.

1 And my point being is that if we could get past doing
2 it for coho salmon, and get past doing it for Northern Spotted
3 Owl, and do it for animals that live on the landscape, I think
4 that that's the kind of forest management I would advocate for
5 the State of California. In fact, for the whole Northwest.

6 SENATOR PETRIS: Are you optimistic about --

7 MR. O'DELL: I'm very optimistic about that.

8 And the first increment of my optimism being rewarded
9 has been my participation in the Board action getting this
10 silvicultural package sent to the Administrative Law -- Office
11 of Administrative Law, and that is, I think, sweeping reforms in
12 silviculture, because it does have sustained plans, where we can
13 deal at property-wide, multiple watershed levels.

14 SENATOR PETRIS: And you think that can be done
15 through regulations pursuant to existing statutes?

16 MR. O'DELL: We are going to do it within regulation,
17 knowing full well that there will be a great deal of discomfort
18 because of the short horizon of five years.

19 SENATOR PETRIS: But you need a longer horizon.

20 MR. O'DELL: We need a longer horizon.

21 SENATOR PETRIS: I'm very interested in that.

22 Many years ago, I carried a bill that I called "The
23 Hundred Year Plan." It was laughed out of existence,
24 unfortunately, but it was a hundred year plan for the whole
25 state which required us to take inventory of all our resources
26 -- lakes, rivers, timber, and many other things -- and try to
27 look ahead a hundred years after looking back.

28 If we look back a hundred years, it's a pretty

1 shocking thing. But that would be a guide and a tool to
2 avoiding the mistakes of the past. It will help us make the
3 state look pretty good a hundred years from now through the
4 kinds of programs you're talking about.

5 Maybe I'll have to dust that off and try it again. I
6 may call on you for some guidance.

7 MR. O'DELL: I'd welcome the opportunity to
8 participate.

9 SENATOR PETRIS: Thanks very much.

10 CHAIRMAN LOCKYER: Is there anyone present who would
11 wish to offer any testimony?

12 Senator Ayala.

13 SENATOR AYALA: I was going to ask Mr. O'Dell, you
14 are the appointee representing the industry to the Board; is
15 that correct?

16 MR. O'DELL: That's correct, Senator.

17 SENATOR AYALA: What is really the obligation of the
18 representative in terms of representing that industry, at the
19 expense of the fisheries, or recreation? Are you expected to
20 represent industry on every single issue?

21 MR. O'DELL: No. I'm not given an agenda that I must
22 follow.

23 I feel that in representing industry, part of my
24 obligation is to represent those other noncommodity entities you
25 just mentioned: recreation, aesthetics, fisheries, all
26 wildlife, as a matter of fact.

27 My job is to represent the industrial point of view
28 of how those properties can be managed without compromising

1 those other noncommodities.

2 SENATOR AYALA: So, when you represent the industry,
3 you're really equally concerned about the fisheries and
4 recreation?

5 MR. O'DELL: Oh, in a major way, yes.

6 SENATOR AYALA: Thank you.

7 CHAIRMAN LOCKYER: Yes, please.

8 MR. MURRAY: Mr. Chairman, thank you. Gil Murray,
9 California Forestry Association.

10 Mr. O'Dell is somewhat modest in his participation in
11 the habitat conservation plan that he mentioned. As he said,
12 that was the first one in the United States.

13 Well, he was instrumental in his company's
14 developing that, and it is, as a conservation tool, probably
15 unprecedented anyplace else. And he mentioned the second one,
16 and a much more small and modest one was only recently adopted
17 in the State of Washington.

18 So, I think he brings good environmental credentials
19 from the industry. His company's on the leading edge.

20 Also, in his public service, he has served for
21 several years on the Board of Forestry's Licensing Committee,
22 which sits in judgment of his fellow foresters to make sure that
23 they are -- their conduct is professional in this state. I
24 think that's to be noted for his public service.

25 Personally, I had the privilege of serving with him
26 on a wildlife task force for the Board of Forestry in 1990, in
27 which we made recommendations to advise the Board of Forestry on
28 how to better address wildlife issues, not just timber-related.

1 He is not a member of our association, but I hope you
2 will confirm him anyway.

3 Thank you.

4 SENATOR PETRIS: Did that include black bears, your
5 wildlife plan?

6 MR. MURRAY: It was a general -- most terrestrial
7 animals in the state. It was mostly wildlife that occurs on
8 forested lands, yes.

9 SENATOR PETRIS: Thanks.

10 CHAIRMAN LOCKYER: Any other comments?

11 MR. CARLESON: Yes, again, Eric Carleson for the
12 California Licensed Foresters Association.

13 Strong support for Mr. O'Dell. They regard him
14 highly as a peer amongst the membership, as a teacher of many of
15 them, and for his work on the commission that creates their
16 examination and updates it.

17 Thank you.

18 CHAIRMAN LOCKYER: I'd simply add that I think you're
19 an exemplary representative of the industry and appropriate for
20 this position.

21 I compliment you for the times that you feel like
22 your responsibility to be steward for the public compels you to
23 be critical even some of the industry's practices. It's clear
24 that you're up to that, and my compliments for those occasions
25 when you feel that calling.

26 MR. O'DELL: Thank you, Senator.

27 CHAIRMAN LOCKYER: What's the pleasure of the
28 Committee?

1 SENATOR BEVERLY: Move we recommend confirmation.

2 CHAIRMAN LOCKYER: We have a motion for
3 recommendation.

4 Let's call the roll, please.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala Aye. Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Beverly Aye. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye. Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Craven Aye. Senator
14 Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Five to zero.

17 MR. O'DELL: Thank you.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 4:03 P.M.]

22 --oo0oo--
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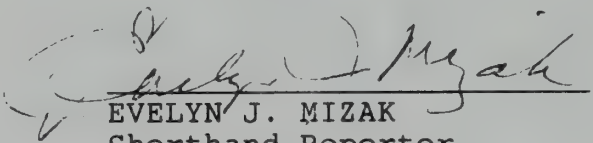
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of March, 1994.


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